85-2006

No._____

Supreme Court, U.S.
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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1985

NATIONAL CAN CORPORATION, *et al.*,
Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Appellee.

ON APPEAL FROM
THE SUPREME COURT OF WASHINGTON

JURISDICTIONAL STATEMENT

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June 2, 1986

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QUESTIONS PRESENTED

1. May a state, consistent with the Commerce Clause, impose an unapportioned gross receipts tax on the manufacture of goods for sale outside the state, while exempting from the tax the identical manufacture of goods for sale within the state?

2. If a state imposes a tax on selling but grants *in-state* manufacturers who pay the selling tax an exemption from another tax, may the state — consistent with the Commerce Clause — impose its selling tax on the unapportioned gross receipts of *out-of-state* manufacturers, without granting them a comparable exemption or benefit?

PARTIES TO THE PROCEEDING

Appellants before the Washington Supreme Court and this Court are 71 business enterprises listed at App. F. The list of parents, subsidiaries, and affiliates of these enterprises required by Rule 28.1 appears at App. G.

Appellee before the Washington Supreme Court and this Court is the State of Washington, through its administrative agency, the Department of Revenue.

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the Washington Supreme Court, which appears at App. A, is reported at 105 Wash. 2d 327, 715 P.2d 128 (1986).

The unpublished opinion of the Superior Court for Thurston County appears at App. B, and the judgment of that court appears at App. C.

JURISDICTION

Appellant taxpayers appeal from the final decision of the Washington Supreme Court rendered March 6, 1986. Notice of Appeal was timely filed in the Washington Supreme Court and the Superior Court for Thurston County on May 22, 1986. App. D.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(2).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The Commerce Clause of the United States Constitution (Art. 1, §8, cl. 3) and Revised Code of Washington, Title 82 (Wash. Rev. Code tit. 82) are reproduced in pertinent part at App. E.

STATEMENT OF THE CASE

FACTS

Washington imposes a gross receipts tax on the privilege of manufacturing within the state. Wash. Rev. Code § 82.04.240. Companies engaging in interstate commerce, who manufacture in Washington but sell their products outside the state, must pay the tax. Washington exempts from the manufacturing tax purely local companies that engage in the identical manufacturing business in Washington, but sell their products within the state. *See* Wash. Rev. Code § 82.04.440.

Washington also imposes gross receipts taxes on the privileges of selling at wholesale and at retail. Wash. Rev. Code §§ 82.04.270 & 82.04.250. By paying either the Washington wholesaling or retailing tax, wholly local businesses obtain an exemption from the state's manufacturing tax. The Appellant interstate businesses, which paid the same selling taxes, received no such exemption or comparable benefit. *See* Wash. Rev. Code § 82.04.440.

Washington bases both its manufacturing and selling taxes on 100% of the gross receipts — without apportionment — from multistate activities having some nexus with the State. *See* Wash. Rev. Code § 82.04.220. This is true though the gross receipts are produced by a combination of substantial activities in other states and activities in Washington. App. H (Stip. 2-6, 8), App. I (Stip. 2- 8, 13 & Ex. A), App. J (Stip. 2-9, 11). It is stipulated that the taxpayers pay taxes to other states, apportioned to their activities in those states, on the same income that is part of Washington's unapportioned tax base. App. H (Stip. 9 & 10), App. I (Stip. 14 & 15), App. J (Stip. 12).

PROCEEDINGS BELOW

This appeal arises from 53 separate actions, brought by 71 businesses engaged in interstate commerce, for refund of

taxes paid to the State of Washington. The businesses range from the sole proprietorship of Mr. E. M. Matson, Jr., to large multinational companies such as Xerox Corporation and Westinghouse Electric Corporation. These taxpayers alleged in their complaints that the Washington taxes at issue violated the Commerce Clause of the United States Constitution.

The 53 cases, presenting similar facts and the same legal issues, were joined for decision by the Superior Court of Thurston County. There being no factual disputes, the facts were stipulated (App. H, I & J) and the cases proceeded to decision on cross motions for summary judgment. The Superior Court granted the State's motions for summary judgment and dismissed the taxpayers' actions. The same 53 cases were consolidated for appeal to the Washington Supreme Court.

Three cases were selected, as representative of the rest, to serve as "test cases." They represent three fact patterns:

(i) Businesses manufacturing products within Washington and selling them outside the state. Kalama Chemical, Inc., is representative. Kalama seeks a refund of $495,000 it paid in manufacturing taxes.

(ii) Businesses manufacturing products in other states and selling them in Washington. Xerox Corporation is representative. Xerox seeks a refund of $1.5 million it paid in selling taxes.

(iii) Businesses engaged in both the foregoing activities — manufacturing in Washington for sale outside the state, as well as manufacturing in other states for sale in Washington. National Can Corporation is representative. It seeks a refund of $980,000, including both manufacturing and wholesaling taxes it paid.

The Washington Supreme Court affirmed the Superior Court's dismissal of the taxpayers' complaints. The court rejected the taxpayers' contentions that the Washington tax scheme violated the Commerce Clause and, in particular, was contrary to this Court's recent decision in *Armco, Inc. v. Hardesty*, 467 U.S. 638 (1984). The Washington Supreme

Court, noting that *Armco* "has already provoked considerable comment" (105 Wash. 2d at 332 n.1, 715 P.2d at 131, App. A-4 *infra*), narrowly interpreted *Armco* and concluded that it did not control this case. Instead, the court below relied upon various decisions antedating *Armco,* because it was "unable to find . . . a command in the *Armco* decision" to "disregard earlier decisions not overruled." *Id.* at 332, 715 P.2d at 131, App. A-4 *infra.*

In addition to these 53 actions, 52 more cases raising the same issues had been filed by the time of trial below and are awaiting decision in the Washington state courts. The State has estimated that the revenues at issue exceed $423 million for the years 1980-1984.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

The Decision Below is Irreconcilable with This Court's Recent Decision in *Armco, Inc. v. Hardesty.*

In *Armco, Inc. v. Hardesty,* 467 U.S. 638 (1984), this Court held that a West Virginia wholesale gross receipts tax, from which local manufacturers were exempt, violated the Commerce Clause. The Court specifically rejected the argument that the exemption from the wholesale tax for local manufacturers was justified because local manufacturers were subject to a manufacturing gross receipts tax.

The Washington tax at issue in this case is the precise mirror image of the tax struck down in *Armco.* Like West Virginia, Washington imposes a wholesaling gross receipts tax and a manufacturing gross receipts tax. While West Virginia exempted wholly local business from the wholesale tax, Washington exempts wholly local business from the manufacturing tax. The end result is the same: interstate commerce is subject to a tax burden from which local commerce is exempt.

The State of Washington participated in *Armco* as an amicus curiae to defend the tax scheme at issue here, which it conceded "is a gross receipts tax very similar to the West

Virginia tax."[1] This similarity results from the fact that Washington once had the West Virginia tax scheme. Prior to 1948, Washington, like West Virginia, exempted local business from the wholesaling tax. The Washington Supreme Court, however, anticipated this Court's *Armco* decision and struck down the Washington tax on Commerce Clause grounds. *Columbia Steel Co. v. State,* 30 Wash. 2d 658, 192 P.2d 976 (1948). In response, the Washington legislature simply reversed the tax scheme, exempting wholly local business from the manufacturing tax instead of the selling tax. *See* 1950 Wash. Laws Spec. Sess., ch.5, § 2 (codified at Wash. Rev. Code § 82.04.440). The issue in this case is whether such a "verbal nicet[y]," as the state court termed it in *B. F. Goodrich v. State,* 38 Wash. 2d 663, 668, 231 P.2d 325, 328, *cert. denied,* 342 U.S. 876 (1951), is sufficient to defeat the substance of the *Armco* decision.

The present Washington tax scheme was first before this Court in *General Motors Corp. v. State,* 377 U.S. 436 (1964). That case involved only one of the fact patterns at issue here, an out-of-state manufacturer selling in Washington. The case did not involve a Washington manufacturer selling in interstate commerce.

A sharply divided court (5-4) ruled that there was a sufficient "nexus" between the taxpayer and the state to survive scrutiny under the Due Process Clause. The present case involves no nexus claim.

The *General Motors* majority recognized that "[a] more difficult question might arise from appellant's claim of multiple taxation." 377 U.S. at 448. The majority, however, "refrained from passing on the question of 'multiple taxation'" because appellant "has not demonstrated what definite burden, in a constitutional sense, the [tax imposed by another jurisdiction] places on the identical interstate

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[1]Brief of the State of Washington Department of Revenue as Amicus Curiae at 1, *Armco, Inc. v. Hardesty,* 467 U.S. 638 (1984).

shipments by which Washington measures its tax." 377 U.S. at 449.[2]

The concerns that deterred the majority's consideration of the Commerce Clause challenges in *General Motors* are not present in this case. In the first place, this case concerns not only out-of-state manufacturers in Washington, but also Washington manufacturers selling out of state. The burden on such manufacturers is clear, since they are subject to a manufacturing tax from which wholly local businesses are exempt.

In addition, the multiple taxation found lacking in *General Motors* is present here. The parties to this case have stipulated that the taxpayers here pay taxes to other states on the same income that is included in the measure of the Washington tax. This is true for all three fact situations: a Washington manufacturer selling goods out of state (Kalama), an out-of-state manufacturer selling goods in Washington (Xerox), and a business both selling in Washington goods manufactured out-of-state and selling out-of-state goods manufactured in Washington (National Can). App. H (Stip. 9 & 10), App. I (Stip. 14 & 15), App. J (Stip. 12).

Although the *General Motors* majority was able to "avoid the basic question" of the validity of the Washington tax under the Commerce Clause, 377 U.S. at 457 (Goldberg, J., dissenting), the four dissenting Justices reached the issue. Justices Brennan, Goldberg, Stewart, and White concluded that the very tax at issue here violated the Commerce Clause. As Justice Brennan noted, the Washington tax "cannot be sustained under the standards required by the Commerce

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[2]As the court below noted, the *General Motors* Court "specifically declined to pass on the question of discrimination in the form of multiple-tax burdens because the appellant there failed to demonstrate any actual multiple-tax burden by showing that another state levied an equivalent tax." 105 Wash. 2d at 331, 715 P.2d at 130, App. A-3 *infra*.

Clause." 377 U.S. at 451.[3] Justice Goldberg, joined in dissent by Justices Stewart and White, anticipated the *Armco* holding by characterizing the pre-1950 Washington tax (identical to the West Virginia tax in *Armco*) as facially discriminatory against interstate commerce. 377 U.S. at 459. Justice Goldberg went on to note that the Washington legislature simply "revers[ed] the tax and the exemption," and that "[t]his amended provision would seem to have essentially the same economic effect on interstate sales but has the advantage of appearing nondiscriminatory." 377 U.S. at 459-60. Justice Goldberg's analysis, fully in accord with this Court's later analysis in *Armco,* demonstrated that this nondiscriminatory pretense could not withstand Commerce Clause scrutiny.[4]

In 1982, this Court was presented with an appeal that foreshadowed Armco's challenge to the West Virginia tax. The Court did not grant plenary consideration but simply dismissed the appeal for want of a substantial federal question. *Columbia Gas Transmission Corp. v. Rose,* 459 U.S. 807 (1982). A contemporaneous challenge to one of the Washington taxes at issue here met the same fate, *Chicago Bridge & Iron Co. v. Washington Department of Revenue,* 464 U.S. 1013 (1983). The summary disposition of the challenge to the West Virginia tax, however, did not bar subsequent plenary consideration in *Armco.* As Justice

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[3]Justice Brennan would have required apportionment because "if commercial activity in more than one State results in a sale in one of them, that State may not claim as all its own the gross receipts to which the activity within its borders has contributed only a part." 377 U.S. at 451. Washington's lack of fair apportionment is also challenged by the present Appellants.

[4]The Washington tax was again before the Court in *Standard Pressed Steel Co. v. Department of Revenue,* 419 U.S. 560 (1975). In a brief opinion addressing primarily a nexus issue (not involved in the present case), the Court noted that Standard's case was indistinguishable from *General Motors,* since the taxpayer did not make "any effort" to show that it was confronted with a burden of multiple taxation. 419 U.S. at 563. As noted, it is stipulated that taxpayers in this case are confronted with just such a burden. *See* App. H, I & J.

Powell noted, "[w]e acknowledge our recent dismissal for want of a substantial federal question of a case raising . . . a nearly identical challenge to the West Virginia gross receipts tax. . . . We may find it necessary not to follow such a precedent when the issue is given plenary consideration." 467 U.S. at 644 n.7. So too here, the summary disposition in *Chicago Bridge & Iron* should not preclude plenary consideration in this case, particularly in light of the intervening *Armco* decision.

In *Armco,* the Court held that "a State may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." 467 U.S. at 642. That is precisely what West Virginia and Washington have done. Justice Powell, writing for the 8-1 majority in *Armco,* stressed that the West Virginia statute, by taxing selling activities of out-of-state manufacturers while exempting identical selling by local manufacturers, discriminated on its face against interstate commerce. The Washington taxes exhibit the same facial discrimination. A Washington manufacturer selling its goods in interstate commerce is subject to the manufacturing tax; a Washington manufacturer selling its goods within the state is not.

This facial discrimination persists in the case of an out-of-state manufacturer selling goods in Washington. Both the out-of-state and in-state manufacturer pay the Washington selling tax. In return, however, Washington grants the in-state manufacturer an exemption from its manufacturing tax, to the extent it refrains from interstate commerce. The out-of-state manufacturer receives no such benefit.[5]

The Court in *Armco* struck down the West Virginia tax as facially discriminatory because it "provides that two companies selling tangible property at wholesale in West Virginia will be treated differently depending on whether the taxpayer conducts manufacturing in the State or out of it." 467 U.S. at 642. Here, the Washington tax provides that two companies

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[5]*See also Maryland v. Louisiana,* 451 U.S. 725, 756-57, 759 (1981) ("first use" tax discriminated against interstate commerce: by paying "first use" tax, in-state producers obtained credits against other Louisiana tax liabilities, not available to purely interstate businesses).

manufacturing tangible property in Washington will be treated differently depending on whether they *sell* the property in the state or out of it. If the property is sold within the state, no tax on the manufacture of that property is imposed. If the property is transported out of state for sale, a tax is imposed on its manufacture in Washington. Kalama and National Can, like Armco, are taxed for engaging in the exact activity (manufacturing) that escapes taxation when performed by a wholly local business. Kalama and National Can are taxed because they sell in interstate commerce instead of locally.

By the same token, both Xerox and wholly local business pay the same wholesaling tax, but the local business receives the benefit of a special exemption from the manufacturing tax, solely because it is a local business. Xerox receives no comparable benefit or adjustment to the Washington taxes it must pay.

In striking down the West Virginia tax, the *Armco* Court stressed that the tax could not satisfy the requirement of "internal consistency." In applying that requirement, the Court asks whether there would be an impermissible interference with interstate commerce if the challenged tax were applied by every jurisdiction. The *Armco* Court noted that the West Virginia tax failed to satisfy this requirement: if other states likewise imposed a tax on manufacturing, out-of-state manufacturers selling in West Virginia would pay both a manufacturing tax and a wholesaling tax, while West Virginia manufacturers selling in West Virginia would pay only the manufacturing tax. 467 U.S. at 644. In lone dissent, Justice Rehnquist criticized the application of the internal consistency test to a gross receipts tax, although he conceded its applicability to income taxes. *Id.* at 647-48.

Curiously, the court below followed the reasoning of the *Armco* dissent and declined to apply the "internal consistency" test to Washington's taxes. 105 Wash. 2d at 339, 341-42, 715 P.2d at 134-35, 136, App. A-11,14 *infra.* The court below sought to justify its failure to follow the *Armco* majority by noting that the decision to apply the test in *Armco* "has

been questioned" by commentators, and that not applying the test was necessary "to avoid . . . incongruities posed by taxpayers' arguments." *Id.* at 339, 715 P.2d at 134-35, App. A-11 *infra.*

If the court below had followed the *Armco* majority and required internal consistency, the result would have been as clear as it was in *Armco*. If, like Washington, another state imposes a manufacturing tax, a company manufacturing there but selling in Washington (*e.g.*, Xerox) would be subject to two taxes, while a company manufacturing in Washington and selling in Washington would be subject to only one. Similarly, if other states imposed a wholesaling tax, a company manufacturing in Washington and selling out of state (*e.g.*, Kalama) would be subject to two taxes, while a company manufacturing in Washington and selling in Washington would still be subject to only one.

The State of Washington has candidly recognized the lack of internal consistency inherent in its taxes. Prior to the *Armco* decision, Washington admitted its tax scheme's lack of internal consistency in its amicus brief to this Court.[6] After this Court's decision in *Armco,* the State devised an "executive briefing" chart to depict the State's "*Armco* problem" in a presentation to the Washington legislature. The chart graphically reveals the facial discrimination against interstate commerce in the Washington tax scheme, with "2 taxes" for interstate commerce but only "1 tax" for wholly local

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[6]The discrimination argument we consider here . . . would arise from the combined effects of two tax systems: that of West Virginia and that of another state should it also choose to adopt the same system as West Virginia. If Armco were subject to both states' systems, because it manufactured in one state and sold the products so manufactured in the other, the combined taxes would be greater than the tax imposed on Armco by West Virginia alone.

. . . *That same possibility exists under Washington's business and occupation tax* . . . .

Brief of the State of Washington as Amicus Curiae at 18, *Armco, Inc. v. Hardesty,* 467 U.S. 638 (1984) (emphasis added).

commerce. App. K (Executive Briefing Chart, Washington State Senate Committee on Ways and Means, Report on S.B. 4228 (March 7, 1985)).

In *Armco,* West Virginia sought to defend its tax scheme by arguing that exempting local business from the wholesale tax imposed on interstate business was justified, because local business was required to pay a manufacturing tax. The *Armco* Court rejected this contention, noting that "manufacturing and wholesaling are not 'substantially equivalent events' such that the heavy tax on in-state manufacturers can be said to compensate for the admittedly lighter burden placed on wholesalers from out of State." 467 U.S. at 643. Justice Rehnquist dissented on this point, contending that the manufacturing tax paid by local manufacturers was significantly higher than, and could be said to incorporate, the wholesale tax paid by out-of-state manufacturers. *Id.* at 646-47.

Once again, the court below — unlike the eight Justices in the *Armco* majority — was apparently persuaded by the dissent. The lower court ruled that, under the Washington scheme, wholesaling and manufacturing *could* be considered "substantially equivalent events," such that a tax on one could be said to compensate for the absence of a tax on the other. 105 Wash. 2d at 335-37, 715 P.2d at 132-34, App. A-6-9 *infra.*

The *Armco* majority, however, clearly ruled that manufacturing and wholesaling are not "substantially equivalent events" and therefore the two taxes could not be considered compensatory. The court below turned this analysis on its head: ruling that the manufacturing and selling taxes in Washington *are* compensatory, the court inferred that manufacturing and wholesaling — in Washington — must, therefore, be "substantially equivalent events."[7] There was

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[7] *Compare Armco,* 467 U.S. at 643 ("manufacturing and wholesaling are not 'substantially equivalent events' such that the heavy tax on in-state manufacturers can be said to compensate for [the wholesale tax]"), *with National Can,* 105 Wash. 2d at 335, 715 P.2d 133, App. A-8 *infra* (question is "when the selling and wholesaling taxes would be deemed compensatory and therefore substantially equivalent").

no need for the court below to engage in extended analysis to determine if wholesaling and manufacturing taxes can be considered compensatory. The *Armco* Court had already decided that, since wholesaling and manufacturing are not substantially equivalent events — not in West Virginia, not in Washington, not anywhere — taxes imposed on those events cannot be compensatory, no matter what mechanical similarities the taxes may have.[8]

As noted, the present case is a "test case," and has been viewed as such not only by the parties but by the courts below. There are no factual disputes; the case involves starkly presented legal questions. Almost one-half billion dollars are at stake in this appeal. The appeal is significant, however, not only because of the amounts involved, and not only because it is viewed as a test case, but because it calls into question the very validity of this Court's recent *Armco* decision. The statute at issue is the mirror image of the statute struck down by an 8-1 Court only two years ago in *Armco*. The holding and reasoning below are clearly incompatible with the holding and reasoning in *Armco*. Indeed, the court below seemed more faithful to the *Armco* dissent than to the majority.

Armco would be a dead letter if states can avoid its carefully reasoned standards simply by a semantic device, like Washington's reversal of its tax scheme. The Court, speaking unanimously through Justice Blackmun, has emphatically rejected that kind of verbal formalism, because it "merely obscures the question whether the tax produces a forbidden effect." *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 288 (1977). Such a superficial verbal evasion of *Armco's* standards — if allowed to succeed — would "narrow . . . the rule to one of draftsmanship and phraseology" and demonstrate that West Virginia "had run afoul of a rule of words rather than a rule of substance." *Id.* at 281, 286. The Court could not have intended its *Armco* decision to be so futile.

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[8] *See, e.g., Maryland v. Louisiana,* 451 U.S. 725 (1981) (taxes with identical rates and measures, *id.* at 731, held not compensatory, because not imposed on substantially equivalent events, *id.* at 759).

CONCLUSION

For the reasons expressed above, this Court should note probable jurisdiction and reverse the judgment below.

Dated: June 2, 1986.

Respectfully submitted,

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Appendix A

OPINION OF THE SUPREME COURT OF THE STATE OF WASHINGTON

NATIONAL CAN CORPORATION, *ET. AL,*
Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Respondent.

[No. 51910-2 En Banc Filed March 6, 1986]

UTTER, J.–This is a direct appeal from the trial court where various commercial enterprises (Taxpayers) claimed Washington's multiple activities exemption to the business and occupation (B & O) tax, RCW 82.04.440, discriminates against interstate commerce in violation of the commerce clause, U.S. Const. art. 1, § 8. The trial court ruled there was no unlawful discrimination. We agree and hold for the respondent, Department of Revenue that the challenged exemption does not violate the commerce clause. Our holding makes it unnecessary to reach the other issues raised by the parties concerning the constitutionality of both the tax refund interest provision, RCW 82.32.060, and the proposed legislation, ESSB 3678, as well as the appropriate form of relief to be afforded Taxpayers.

Fifty-three separate actions for refunds of B & O taxes paid to the Department were filed. Each Taxpayer claimed the tax violates the commerce clause. These actions were joined for decision by the Thurston County Superior Court which granted the Department's motion for summary judgment and denied the Taxpayers' motions for injunctions against further collection of the B & O taxes in question. The 53 cases were consolidated for this appeal and, in addition, 52 other substantially similar actions are pending in Thurston County Superior Court. The amount in question is estimated to exceed $423 million.

Three plaintiffs were selected by the parties to serve as "test cases" in the appeal. Kalama Chemical, Inc., a representative plaintiff, manufactures its products in Washington and sells them outside of Washington. Xerox Corporation, the second representative plaintiff, manufactures its products outside Washington and sells them within Washington. The appellant in a companion case would appear to fit most closely within this category of plaintiffs. *See Tyler Pipe Indus., Inc. v. Department of Rev.*, 105 Wn.2d 318, ____ P.2d ____ (1986). National Can Corporation, the third representative plaintiff, manufactures products in Washington for sale outside Washington, and also manufactures products outside Washington for sale in Washington. Kalama Chemical, Inc., seeks a refund of the manufacturing tax it paid ($495,000); Xerox Corporation seeks a refund of the wholesale tax it paid ($1.5 million); National Can Corporation seeks a refund of both the manufacturing and wholesale taxes it paid (approximately $900,000). The period in dispute is from 1980 to the present.

The issue before us is whether Washington's B & O tax exemption, RCW 82.04.440, violates the commerce clause because it (1) discriminates against interstate commerce, (2) is unfairly apportioned, or (3) is not fairly related to the services provided by the State.

Neither this court, nor the State Legislature, "is the final arbiter" of commerce clause issues. *See Southern Pac. Co. v. Arizona ex rel. Sullivan,* 325 U.S. 761, 89 L. Ed. 1915, 65 S. Ct. 1515 (1945). In an earlier challenge to this B & O tax, we recognized "our duty [is] to abide by controlling United States Supreme Court decisions construing the federal constitution." *Association of Wash. Stevedoring Cos. v. Department of Rev.*, 88 Wn.2d 315, 318, 559 P.2d 997 (1977), *rev'd,* 435 U.S. 734, 55 L. Ed. 2d 682, 98 S. Ct. 1388 (1978). This court's rulings on the constitutionality of the Washington B & O tax have generally withstood the United States Supreme Court's scrutiny, *see, e.g., General Motors Corp. v. Washington,* 377 U.S. 436, 12 L. Ed. 2d 430, 84 S. Ct. 1564 (1963); *Standard Pressed Steel Co. v. Department of Rev.,*

419 U.S. 560, 42 L. Ed. 2d 719, 95 S. Ct. 706 (1975), except when we have read the commerce clause too broadly and struck down the tax. *See Association of Wash. Stevedoring Cos. v. Department of Rev.,* 88 Wn.2d at 318-20.

We find ourselves today in a similar situation. For over 30 years, Washington's B & O tax has been repeatedly upheld by the federal courts against charges that it discriminated against interstate commerce. *See B.F. Goodrich Co. v. State,* 38 Wn.2d 663, 231 P.2d 325, *cert. denied,* 342 U.S. 876, 96 L. Ed. 659, 72 S. Ct. 167 (1951). In *B.F. Goodrich,* we held that the B & O tax does not discriminate against interstate commerce because, under that law, all wholesalers are taxed identically. We relied on the theory that any multiple-tax burdens on interstate commerce, whereby out-of-state businesses must pay a manufacturing tax in another state plus a wholesale tax in Washington, were merely "an inevitable consequence of the power of the several states to tax". 38 Wn.2d at 669; *see also General Motors Corp. v. State,* 60 Wn.2d 862, 376 P.2d 843 (1962) (B & O tax upheld against charges of discrimination, applying the *Goodrich* analysis). The Supreme Court affirmed, *General Motors Corp. v. Washington,* 377 U.S. 436, 12 L. Ed. 2d 430, 84 S. Ct. 1564 (1964), but specifically declined to pass on the question of discrimination in the form of multiple-tax burdens because the appellant there failed to demonstrate any actual multiple-tax burden by showing that another state levied an equivalent tax.

In *Chicago Bridge & Iron Co. v. Department of Rev.,* 98 Wn.2d 814, 832, 659 P.2d 463, *appeal dismissed,* 464 U.S. 1013 (1983), this court upheld the tax against charges of discrimination in the form of multiple-tax burdens. The court cited *Moorman Mfg. Co. v. Bair,* 437 U.S. 267, 277 n.12, 57 L. Ed. 2d 197, 98 S. Ct. 2340 (1978), for the proposition that the multiple-tax burdens experienced by interstate businesses are a "consequence of the *combined* effect of different states' laws" and were not caused by Washington's taxing scheme. 98 Wn.2d at 832. The United States Supreme Court dismissed the subsequent appeal "for want of a federal question,"

Chicago Bridge & Iron Co. v. Washington Dep't. of Rev., 464 U.S. 1013, 78 L. Ed. 2d 718, 104 S. Ct. 542 (1983), which we understand to be a decision on the merits. *Washington v. Confederated Bands & Tribes of Yakima Indian Nation,* 439 U.S. 463, 476 n.19, 58 L. Ed. 2d 740, 99 S. Ct. 740, *reh'g denied,* 440 U.S. 940, 59 L. Ed. 2d 500, 99 S. Ct. 1290 (1979).

Taxpayers assert, however, that a recent Supreme Court case, *Armco, Inc. v. Hardesty,*____U.S.____, 81 L. Ed. 2d 540, 104 S. Ct. 2620 (1984),[1] effectively overrules, *sub silentio,* these 30 years of Supreme Court doctrine. As a result of their reading of *Armco,* Taxpayers ask this court to strike down the state's B & O tax and refund all moneys allegedly improperly received under it since 1980.

Due to factual differences between the West Virginia tax, challenged in *Armco, see* 104 S. Ct. at 2621-22, and the Washington tax, we do not believe the United States Supreme Court is requiring us to forge new commerce clause doctrine and disregard earlier decisions not overruled. We are unable to find such a command in the *Armco* decision. We are also troubled by the "free-rider" effect of Taxpayers' argument. As Taxpayers conceded at oral argument, their interpretation of *Armco* would force the State to forego taxing a substantial

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[1]The decision has already provoked considerable comment. *See* Judson & Duffy, *An Opportunity Missed: Armco, Inc. v. Hardesty, A Retreat from Economic Reality in Analysis of State Taxes,* 87 W. Va. L. Rev. 723 (1985); Lathrop, *Armco-A Narrow and Puzzling Test for Discriminatory State Taxes Under the Commerce Clause,* Taxes 551 (Aug. 1985); Lightburn & McArthur, *U.S. Supreme Court Ignores Unitary Issue in Armco, Inc. Opting for Discriminatory Finding,* 3 J. of St. Tax'n 211 (1984); Note, *A Call for Internal Consistency Among State Taxing Schemes: Armco, Inc. v. Hardesty,* 38 Tax Law. 519 (1985); *Sup. Ct. Holds West Virginia's Wholesale Gross Receipts Tax Unconstitutional,* Tax Adviser 487 (Aug. 1984); *West Virginia Gross Receipts Tax Discriminates Against Interstate Commerce,* 3 J. of St. Tax'n 143 (1984). (1984).

number of in-state transactions where state services had admittedly been furnished. This implies that a state, to make up the deficit, must impose a double tax burden on in-state manufacturer-wholesalers.

THE COMMERCE CLAUSE ISSUES

RCW 82.04.220 imposes, in general, a tax upon the privilege of engaging in business activities in Washington. The tax is measured by the application of rates against (1) the value of the products, (2) gross proceeds of sales, or (3) the gross income of the business, whichever is applicable. RCW 82.04.240 imposes a tax upon Washington manufacturers. RCW 82.04.270 taxes every person who sells products at wholesale in Washington. The disputed provision, RCW 82.04.440, provides that persons taxable under RCW 82.04.270 (wholesalers) shall not be taxed under RCW 82.04.240 (as local manufacturers). Thus, local manufacturers who wholesale their products strictly in Washington pay only the wholesaling tax. Further, a local extractor of a product who wholesales in Washington pays only the wholesaling tax, just as do out-of-state extractors. RCW 82.04.440. Under RCW 82.04.240, in-state manufacturers and extractors who sell their products out of state pay only the manufacturing tax, at a rate substantially identical to that paid by in-state wholesalers.

A state B & O tax must pass a 4-prong test to be valid under the commerce clause: (1) There must be a sufficient *nexus* or connection between the taxing state and the business taxes; (2) the tax must be *fairly apportioned;* (3) the tax cannot *discriminate* against interstate commerce in favor of local commerce; and (4) the tax must be *fairly related* to the services provided by the taxing state. *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 279, 51 L. Ed. 2d 326, 97 S. Ct. 1076 (1977). *Department of Rev. v. Association of Wash. Stevedoring Cos.,* 435 U.S. 734, 55 L. Ed. 2d 682, 98 S. Ct. 1388 (1978). Appellants contend that Washington's B & O tax fails the last three prongs of this test.

Because the heart of Taxpayers' complaint is that the statute fails the third prong, discrimination, that issue is addressed first. The second (fairly apportioned) and fourth (fairly related) prongs will be addressed together. Nexus is not at issue in this case, but is contested in the companion case. *See Tyler Pipe Indus., Inc. v. Department of Rev.*, 105 Wn.2d 318, _____ P.2d _____(1986).

A

DISCRIMINATION

A state's taxing scheme is discriminatory under the commerce clause if it grants a direct commercial advantage to local businesses or subjects interstate commerce to a risk of multiple tax burdens, to which strictly local commerce is not exposed. *See Boston Stock Exch. v. State Tax Comm'n*, 429 U.S. 318, 50 L. Ed. 2d 514, 97 S. Ct. 599 (1977); *Gwin, White & Prince, Inc. v. Henneford*, 305 U.S. 434, 83 L. Ed. 272, 59 S. Ct. 325 (1939). Any direct commercial advantage to local businesses inherent in Washington's B & O tax results from duplicative tax burdens; *e.g.*, the fact that strictly local businesses pay only one tax (either wholesale or manufacturing), while interstate businesses may possibly be subjected to one tax in this state and another tax at a different level of distribution in another state. Appellants contend that the recent Supreme Court decision, *Armco, Inc. v. Hardesty*,____ U.S.____, 81 L. Ed. 2d 540, 104 S. Ct. 2620 (1984), controls where there is a possibility of multiple-tax burdens and requires the invalidation of Washington's B & O tax.

In *Armco*, the Court invalidated West Virginia's gross receipts tax, under which local manufacturers were exempted from payment of the wholesale tax when they sold their locally manufactured products in West Virginia. Out-of-state manufacturers were required to pay the West Virginia wholesale tax when they sold their products in that state.

West Virginia's gross receipts tax is claimed to be the mirror image of Washington's present tax. West Virginia granted strictly local manufacturer-wholesalers an exemption

from its wholesale tax; Washington grants strictly local manufacturer-wholesalers an exemption from its manufacturing tax. Besides providing an exemption to taxpayers who have already paid one state excise tax, the two tax systems are similar in that they are gross receipts taxes.[2] Their points of difference, however, have become more noteworthy after the *Armco* decision. The West Virginia tax exacted substantially different tax rates on manufacturing (.27 percent) and wholesaling activities (.88 percent), which precluded the Court from finding that the wholesaling tax compensated for the manufacturing tax. *Armco,* 104 S. Ct. at 2623. By exacting substantially identical rates (.44 percent) for each activity, the Washington tax does not present the same obstacle to finding the taxes are compensatory.

In *Armco,* the Court held that West Virginia's tax facially discriminated against interstate commerce, 104 S. Ct. at 2622, because it provided that "two companies selling . . . property at wholesale . . . will be treated differently depending on whether the taxpayer conducts manufacturing in the State or out of it." *Armco,* 104 S. Ct. at 2622-23. The Court further determined that under the West Virginia tax scheme the manufacturing and wholesaling were not "substantially equivalent events" which would allow for the imposition of compensating taxes. *Armco,* 104 S. Ct. at 2623. It also noted that West Virginia did not allow for a proportionate reduction of its manufacturing tax when the manufactured goods were sold out of state, but did allow such a reduction when the goods were partly manufactured out of state. This was taken as evidence that the manufacturing tax was "not in part

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[2]The similarities were acknowledged by the Department when it was before the *Armco* Court. See *Armco,* 104 S. Ct. at 2624. In oral argument before this court, however, the Department stated that the *Armco* opinion, with its emphasis on the rates and measures of the West Virginia tax, makes the differences between the two states' taxes more significant than their similarities.

a proxy for the gross receipts tax imposed on Armco . . ." 104 S. Ct. at 2623.

While the Court did not explain what it meant by "substantially equivalent events, "[3] its reliance on *Maryland v. Louisiana,* 451 U.S. 725, 758-60, 68 L. Ed. 2d 576, 101 S. Ct. 2114 (1981) indicates a criterion to guide us in determining when the selling and wholesaling taxes would be deemed compensatory and therefore substantially equivalent. In *Maryland v. Louisiana, supra,* Louisiana claimed its first-use tax compensated for a severance tax the State had imposed on local natural gas production. The first use tax fell primarily on gas produced in the federal Outer Continental Shelf (OCS) and piped to Louisiana processing plants before being distributed to out-of-state consumers. The Court stated the 2-pronged criterion for determining compensatory taxes: (1) both taxes must be designed to meet the same ends; (2) local and interstate taxpayers similarly situated must receive equal treatment. 451 U.S. at 758-59.

The Louisiana tax failed on both prongs of the test. The purpose of the severance tax was to protect Louisiana's natural resources and compensate for their depletion. The first-use tax, however, could not be designed for that same purpose, "since Louisiana has no sovereign interest in being compensated for the severance of resources from the federally owned OCS land." 451 U.S. at 759. The Court also noted that Louisiana's first-use tax directly altered market forces in three impermissible ways: (1) certain local uses of OCS gas were exempted from the tax; (2) its credit system encouraged "natural gas owners involved in the production of OCS gas to invest in mineral exploration and development within

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[3]That the rate varies slightly for various types of businesses is not germane to the present issue. The variance comes from a subsequently enacted surtax. RCW 82.04.2904. Moreover, mathematical equality is not required. *General Am. Tank Car Corp. v. Day,* 270 U.S. 367, 373, 70 L. Ed. 635, 46 S. Ct. 234 (1926).

Louisiana" rather than continue to pursue out-of-state, *e.g.*, OCS, development; (3) the credit system also assured that in-state end users of OCS gas would be insulated from the cost increases resulting from the first-use tax. 451 U.S. at 757.

None of the skewed market behavior due to the Louisiana tax appears to have developed in West Virginia. The *Armco* Court, however, found that the lack of symmetry in the West Virginia tax structure demonstrated that the selling and manufacturing taxes did not share the same end. 104 S. Ct. at 2623. That West Virginia apportioned its manufacturing tax according to the percentage of in-state manufacturing a particular product represented, meant that West Virginia's selling tax could not be a substantially equivalent event for the manufacturing tax. In contrast, however, the flat rate character of the Washington taxes evidence the Legislature's intent to treat the two taxes as complementary and, therefore, compensatory.

Furthermore, the Washington B & O tax does not exhibit the infirmities that led the Court in *Maryland v. Louisiana, supra,* to conclude the first-use tax could not be a compensatory tax for the state's severance tax. The Washington B & O tax is designed to tax the privilege of engaging in business activity *within* the state. RCW 82.04.220. Both the selling and the manufacturing taxes are exacted to address the same state burdens attendant on granting such a privilege. All who engage in selling activity within Washington pay the selling B & O tax, while those in-state manufacturers who sell out of state are taxed on their manufacturing activity. Each Taxpayer is taxed only once, at a substantially uniform rate,[4]

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[4]By way of example, the Court did suggest that sale and use taxes fell on substantially equivalent events. Other than representing activities farther downstream in the distribution chain, we do not see an economically significant difference between "sale and use" and "manufacturing and sale." *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 51 L. Ed. 2d 326, 97 S. Ct. 1076 (1977) requires some relationship between a legal distinction and "economic realities." 430 U.S. at 279.

unlike West Virginia, for the privilege of doing business in Washington.

Nor does the tax exhibit a discriminatory impact. Unlike the Louisiana tax, the market forces are not altered by the incidence of the tax. In-state manufacturers selling out of state do not gain a tax advantage by shifting sales of their product to the local market. Similarly, out-of-state manufacturers selling in state gain no tax advantage by moving their manufacturing operations in state. Also in contrast with the Louisiana tax is the fact that in-state consumers are not insulated from the price effects of the tax on the goods.

We are further persuaded that the Washington tax is valid because it is conceptually identical to the pre-1968 New York stock transfer tax the Court endorsed in *Boston Stock Exch. v. State Tax Comm'n,* 429 U.S. 318, 50 L. Ed. 2d 514, 97 S. Ct. 599 (1977) which was in turn reaffirmed in *Armco,* 104 S. Ct. at 2622. *Boston Stock Exchange* involved New York's attempt to keep the New York Stock Exchange by amending the stock transfer tax so that nonresidents who completed transfers entirely in New York paid a lower tax than would residents, and that transfers occurring entirely within New York could only be taxed to a maximum of $300, while there was no ceiling on other transfers. The tax was patently discriminatory and, unlike the B & O tax, was not part of a larger tax structure. The Court, however, spoke favorably of the unamended statute that taxed residents and nonresidents alike on one of several taxable stock transactions that could occur within the state. For both kinds of taxpayers, "the occasion of the tax was the occurrence of at least one taxable event in the State, the rate of tax was based solely on the price of the securities, and the total tax was determined by the number of shares sold." 429 U.S. at 322-23.

The *Armco* Court relied heavily upon the *Boston Stock Exchange* case as authority for striking down the West Virginia tax. *Boston Stock Exchange*'s favorable treatment of the pre-1968 amendments, *see* 429 U.S. at 330, and the apparent centrality of that holding to *Armco* requires harmonization of the two opinions. The incongruities between

Taxpayers' reading of *Armco* and earlier, well established commerce clause cases, *see, e.g., Commonwealth Edison Co. v. Montana,* 453 U.S. 609, 69 L. Ed. 2d 884, 101 S. Ct. 2946 (1981); *Complete Auto; Boston Stock Exchange,* makes us reluctant to extend *Armco* as Taxpayers urge. There is a disturbing formalism in their argument that manufacturing and wholesaling are never "substantially equivalent events." To read *Armco* thusly would foreclose analyzing a taxpayer's burden in light of both the structure of the relevant tax system and its effect on a single economic unit. Appellants' argument would force us to regard the gross receipts tax system as consisting of two separate taxes, manufacturing and selling, and to retreat from the *Complete Auto* "practical effects" test which *Armco* does not overrule or claim to modify. *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 51 L. Ed. 2d 326, 97 S. Ct. 1076 (1977). To do so would be to ignore the "economic realities," 430 U.S. at 279, that a business unit frequently operates at several levels in the distribution chain and the costs of those various operations come to bear on the single product which serves as the measure of taxation. *See also* Judson & Duffy, *An Opportunity Missed: Armco, Inc. v. Hardesty, A Retreat from Economic Reality in Analysis of State Taxes,* 87 W. Va. L. Rev. 723, 741 (1985); Lathrop, *Armco—A Narrow and Puzzling Test for Discriminatory State Taxes Under the Commerce Clause,* Taxes 551, 552, 559 (Aug. 1985).

Similarly, to avoid other incongruities posed by Taxpayers' arguments, we do not read *Armco* as requiring that the "internal consistency" requirement be applied to determine discrimination. The concept, "internal consistency," originated in the fair apportionment analysis of a multi-state net income tax case, *Container Corp. of Am. v. Franchise Tax Bd.,* 463 U.S. 159, 169, 77 L. Ed.2d 545, 103 S. Ct. 2933 (1983), and its applicability to gross receipts tax cases has been questioned. *See* Lathrop, at 557. Nevertheless, the concept seems to have been used only to determine whether Armco Inc., had to show actual harm once it had demonstrated the tax provision was facially discriminatory. *See* Judson &

Duffy, 87 W. Va. L. Rev. at 739. As we have previously discussed, however, Washington's tax is not facially discriminatory. We note further that the Court, were it to have grafted the concept onto the discrimination prong, would have obscured the *Complete Auto* test by treating the "multiple taxation" apportionment prong as a discrimination problem. Reflecting its greater complexity, the "fair apportionment" prong has been subject to more generous standards than has the discrimination prong. *See, e.g. Container Corp.,* 463 U.S. at 170; *Moorman Mfg. v. Bair,* 437 U.S. 267, 278, 57 L. Ed. 2d 197, 98 S. Ct. 2340 (1978).

Because the West Virginia and Washington taxes differ significantly, we must reject appellants' argument and rely on the long history of the United States Supreme Court's treatment of this state's gross receipts tax as having withstood commerce clause challenges, *see Department of Rev. v. Association of Wash. Stevedoring Cos.,* 435 U.S. 734, 55 L. Ed. 2d 682, 98 S. Ct. 1388 (1978); *Standard Pressed Steel Co. v. Department of Rev.,* 419 U.S. 560, 42 L. Ed. 2d 719, 95 S. Ct. 706 (1975); *General Motors Corp. v. Washington,* 377 U.S. 436, 12 L. Ed. 2d 430, 84 S. Ct. 1564 (1964); *Chicago Bridge & Iron Co. v. Department of Rev.,* 98 Wn.2d 814, 659 P.2d 463, *appeal dismissed,* 464 U.S. 1013 (1983); *Crown Zellerbach Corp. v. State,* 45 Wn.2d 749, 278 P.2d 305 (1954); *B.F. Goodrich Co. v. State,* 38 Wn.2d 663, 231 P.2d 325, *cert. denied,* 342 U.S. 876, 96 L. Ed. 659, 72 S. Ct. 167 (1951), as well as the general development of commerce clause analysis from *Complete Auto* to *Armco. See, e.g., Container Corp. of Am. v. Franchise Tax Bd., supra; Commonwealth Edison Co. v. Montana, supra; Maryland v. Louisiana, supra; Moorman Mfg. Co. v. Bair, supra.* Under these two lines of precedent, we do not find the tax discriminatory.

B

FAIR APPORTIONMENT; TAX FAIRLY RELATED TO SERVICES PROVIDED BY THE STATE.

Taxpayers also claim that Washington's B & O tax violates the commerce clause because it is not fairly apportioned to reflect the amount of business conducted here, and it is not fairly related to the services rendered by Washington. As a result, Taxpayers complain that they are unfairly taxed upon more than 100 percent of their incomes. Hence, under the second and fourth prongs of the *Complete Auto* test, Taxpayers claim that interstate businesses are improperly subjected to multiple-tax burdens.

1. Fair Apportionment

Most apportionment cases have arisen in challenges to state income taxes where the income of a unitary multi-state business comes from a variety of tax jurisdictions. As Judson and Duffy note, a B & O tax on business activity within the state does not present the same difficulty in determining a nexus between business activity and the tax jurisdiction. Judson & Duffy, 87 W. Va. L. Rev. at 728. Moreover, even in the income tax cases, the Court has afforded legislatures a generous standard. In *Exxon Corp. v. Wisconsin Dep't. of Rev.,* 447 U.S. 207, 219-20, 65 L. Ed. 2d 66, 100 S. Ct. 2109 (1980), the Court looked only to whether there was " 'a rational relationship between the income attributed to the State and the intrastate values of the enterprise.' " *See also, e.g., Container Corp of Am. v. Franchise Tax Bd., supra.* Earlier, the *Moorman* Court had refused to require Iowa to employ the favored 3-factor test, urged here by Taxpayers, instead of its single-factor test for apportioning interstate commerce income. To disturb the formula, the taxpayers in *Moorman* would have to show by " 'clear and cogent evidence' that the income attributed to the State is in fact 'out of all appropriate proportions to the business transacted . . . in that State' . . . or has 'led to a grossly distorted result'. . . " 437 U.S. at 274.

The mere threat that income not generated in the state will be taxed under a formula does not make the formula constitutionally defective. 437 U.S. at 278. Congress, not the Court, must enact national uniform rules for the division of income if it finds duplicative taxation a problem. 437 U.S. at 279.

Washington's B & O tax has been held to be fairly apportioned in previous cases. *See Department of Rev. v. Association of Wash. Stevedoring Cos., supra; Standard Pressed Steel Co. v. Department of Rev., supra; Chicago Bridge & Iron Co. v. Department of Rev., supra.* Nonetheless, Taxpayers urge that, under *Armco,* the tax must now pass the "internal consistency" test articulated in *Container Corp. of Am. v. Franchise Tax Bd., supra,* and cited in *Armco.* In applying that test, the court must hypothesize that every jurisdiction has adopted a tax identical to the tax in question; the result must be that no more than 100 percent of a single business's income is taxed by one state.

We agree with the Department that the "internal consistency" test articulated in *Container Corp.* and *Armco* does not apply to the determination whether the B & O tax is fairly apportioned. This is because Washington does not tax the income of a unitary business, but rather taxes only the privilege of manufacturing or selling within the state. Thus, respondent urges that Washington's tax is apportioned by "allocation"; that is, the tax is applied only to the value of products manufactured in Washington or to the gross proceeds of sales in Washington.

We do not read the *Armco* opinion to apply its "internal consistency" test to the question of whether a state gross receipts tax is fairly apportioned. We believe that it does not apply not only because of the appeal of the Department's argument, but because the *Armco* Court said nothing about the status of *Washington Stevedoring. See* 435 U.S. 734. If the "internal consistency" requirement applied to the fair apportionment prong, *Washington Stevedoring* should be overruled for requiring a showing of actual harm to make out unfair apportionment. 435 U.S. at 746 & n.16. Further, speaking specifically of the tax challenged here, the Court said,

"[w]hen a general business tax levies only on the value of services performed within the State, the tax is properly apportioned and multiple burdens logically cannot occur." 435 U.S. at 746-47.

2. Fairly Related

The *Armco* Court did not address the "fairly related to state services" prong. The controlling case is *Commonwealth Edison Co. v. Montana,* 453 U.S. 609, 69 L. Ed. 2d 884, 101 S. Ct. 2946 (1981). Certain Montana coal producers and their out-of-state customers argued that they should be permitted to show that the state's high coal severance tax was not fairly related to state services provided. The Court refused to view the fair relation test as a cost-benefit analysis of the taxes paid and services received. The test is basically a nexus test, with "the additional limitation that the *measure* of the tax must be reasonably related to the extent of the [taxpayer's] contact" with the state. 453 U.S. at 626. The Court declined to determine what a reasonable measure might be because (1) no usable legal test could adequately reflect the varied considerations that "inform a decision about an acceptable rate or level of state taxation", 453 U.S. at 628; and, hence, (2) this is a question more suited to the political process. The taxpayer's "substantial privilege of mining coal" provided sufficient nexus and the only benefit the state needed to show was that the taxpayer enjoyed the "privileges of living in an organized society, established and safeguarded by the devotion of taxes to public purposes." 453 U.S. at 629. *See also Japan Line, Ltd. v. County of Los Angeles,* 441 U.S. 434, 60 L. Ed. 2d 336, 99 S. Ct. 1813 (1979).

Manufacturing, or wholesaling, would also appear to be privileges comparable to mining so that the nexus requirement is sufficiently met in the present case. Despite any warts Washington may suffer, the State can show that ours is "an organized society." While local manufacturer-sellers enjoy "two activities for the price of one", interstate businesses cannot, under this prong, apply a cost-benefit analysis to show how they have been short-changed.

We believe the Washington B & O tax continues to meet commerce clause standards. We do not believe *Armco* requires the result urged by appellants and can be reconciled with compelling precedent not overruled in *Armco* and with scholarly commentary. We also believe the controlling facts in *Armco* differ significantly from those before us. The trial court is affirmed.

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

NATIONAL CAN CORPORATION, *et al.*,
Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Respondent.

No. 51910-2
Thurston County No. 84-2-01900-7
MANDATE

The State of Washington to: The Superior Court of the State of Washington in and for Thurston County

This is to certify that the opinion of the Supreme Court of the State of Washington filed on March 6, 1986, became the decision terminating review of this court in the above entitled case on March 26, 1986. This cause is mandated to the superior court from which the appeal was taken for further proceedings in accordance with the attached true copy of the opinion.

Pursuant to Rule of Appellate Procedure 14.3, costs are taxed as follows: $1,264.66 in favor of respondent State of Washington, Department of Revenue and against appellants National Can Corporation, et al.

[seal]

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Olympia, this 27th day of March, A.D. 1986

/s/ Reginald N. Shriver
Clerk of the Supreme Court, State of Washington

Appendix B

OPINION OF THE SUPERIOR COURT OF THURSTON COUNTY, WASHINGTON

IN THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF THURSTON

KALAMA CHEMICAL, INC.,
Plaintiff,

v.

STATE OF WASHINGTON,
DEPT. OF REVENUE,
Defendant.
NO. 84-2-01891-4

XEROX CORPORATION,
Plaintiff,

v.

STATE OF WASHINGTON,
DEPT. OF REVENUE,
Defendant.
NO. 84-2-01916-3

NATIONAL CAN CORPORATION,
Plaintiff,

v.

STATE OF WASHINGTON,
DEPT. OF REVENUE,
Defendant.
NO. 84-2-01900-7

MEMORANDUM OPINION

[Entered June 28, 1985]

These cases, respectively, challenge the constitutionality of the manufacturing (RCW 82.04.240)[1], wholesaling (RCW 82.04.270)[2], and retailing (RCW 82.04.250)[3] taxing aspects of the business and occupation taxing statute of the state of Washington (RCW Ch. 82.04). The crux of the respective challenges turns, to some extent, upon the multiple activities' exemption set forth in RCW 82.04.440[4], and primarily, upon the impact of the decision of the United States Supreme Court in *Armco v. Hardesty*,__US__, 81 L.Ed. 2d 540, 104 S.Ct. 2620 (1984).

The essential facts are undisputed.

The rate and measure of the manufacturing, wholesaling

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[1]RCW 82.04.240. "Upon every person . . . engaging in this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including by products manufactured, multiplied by the rate of forty-four one-hundredths of one percent." Under RCW 82.04.450 "value of the products" is determined by the "gross proceeds derived from the sale thereof."

[2]RCW 82.04.270. "(1) Upon every person . . . engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of forty-four one-hundredths of one percent. . ."

[3]RCW 82.04.250. "Upon every person . . . engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of forty-four one-hundredths of one percent."

[4]RCW 82.04.440. "Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to RCW 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in: *Provided,* That persons taxable under RCW 82.04.250 [retailing] or 82.04.270 [wholesaling] shall not be taxable under . . . RCW 82.04.240 [manufacturing] . . . with respect to . . . manufacturing of the products so sold. . ."

and retailing taxes are the same, i.e., .0044 of 1% of gross proceeds of product sales.

Plaintiff Kalama Chemical, Inc. (hereafter Kalama) manufactures chemical products within the state of Washington, which products it sells both in and out of state. For these purposes Kalama employs some 95 people within the state consisting of management, administrative and manufacturing personnel.

In keeping with the multiple exemption statute (footnote 4) Kalama pays only a wholesaling or retailing tax on the products sold in state. On the products sold out of state, Kalama is assessed and has paid the manufacturing tax. Kalama also pays unspecified amounts of taxes to other states based on income from the sale of its products therein manufactured in Washington.

Kalama challenges imposition of the manufacturing tax.

Xerox Corporation (hereafter Xerox) manufactures office equipment in other states, some of which it imports and sells in the state of Washington. To this latter end Xerox has 460 employees in this state, consisting of sales representatives, service technicians and administrative personnel, and locally maintains sales and service offices and a products demonstration center. Upon its product sales in this state Xerox has paid the wholesaling or retailing tax. Xerox has also paid proportioned income taxes to other jurisdictions, in unspecified amounts, based on its sales in Washington.

Xerox challenges the constitutionality of the wholesaling or retailing tax imposed upon its sales in this state.

National Can Corporation (hereafter National) manufactures and sells packaging products. Some of these products are manufactured in the state of Washington and sold outside of this state and some are manufactured in other states and sold in the state of Washington. On the products manufactured in this state and sold outside the state, National, like Kalama, is assessed and has paid the manufacturing tax. On the products manufactured elsewhere and sold within this state National, like Xerox, has paid the wholesaling or

retailing tax.

National challenges both tax impositions. All challenges contend the respective tax impositions constitute restraints on interstate commerce in violation of the Commerce Clause of the United States Constitution (Art. I, Sec. 8, Cl. 3).

A review of the maze of United States Supreme Court decisions revolving about asserted state taxing violations of the Commerce Clause reveals at least three applicable general principles:

1. Interstate commerce must bear its fair share of the cost of state government and the services and benefits provided thereby, even though such may increase the cost of engaging in interstate commerce. *Western Live Stock v. Bureau of Revenue,* 303 U.S. 250, 82 L.Ed.823, 58 S. Ct. 546 (1938).

2. A state may encourage, through its taxing system, the growth of intrastate industry, and may compete with other states for a share of interstate commerce so long as it does not provide a direct commercial advantage to local business. *Boston Stock Exchange v. State Tax Commn.,* 429 U.S. 318, 50 L.Ed. 2d 514, 97 S. Ct. 599 (1977); *Maryland v. Louisiana,* 451 U.S. 725, 68 L.Ed. 2d 576, 101 S. Ct. 2114 (1981); *Bacchus Imports, Ltd. v. Dias,*__U.S.__,82 L.2d 2d 209, 104 S.Ct. 3049 (1984).

3. For a state to constitutionally impose a tax on interstate activities, there must be: (a) a sufficient nexus between the interstate activities and the taxing state; (b) a fair apportionment of the tax in relation to the taxpayer's activities within the taxing state; (c) no tax discrimination between intrastate and interstate transactions; and, (d) a fair relationship to services and protections afforded the taxpayer by the taxing state. *Complete Auto Transit, Inc. v. Brady,* 430 U.S. 274, 51 L.Ed. 2d 326, 97 S.Ct. 1076 (1977).

Plaintiffs do not contest these general principles. Rather, they contend that by their decision in *Armco v. Hardesty, supra,* the United States Supreme Court has added new dimensions to the technique of ascertaining whether a state tax on gross proceeds discriminates between intrastate and

interstate commerce.

First, plaintiffs contend the taxing scheme invalidated in *Armco* is essentially identical to this state's taxing program here under attack, *ergo, Armco* is dispositive.

This court cannot entirely agree with plaintiff's assertions. A significant difference does exist. It is to be noted that the West Virginia tax provisions stricken in *Armco,* imposed no selling tax on in-state manufacturers selling intrastate, while exacting such a tax from out-of-state manufacturer selling in West Virginia, whereas, this state imposes an equal selling tax on local sales whether made by in-or-out-of-state manufacturers. Compare *Columbia Steel Co. v. State,* 30 Wn. 2d 658, 192 P.2d 976 (1948) and *B.F. Goodrich v. State,* 38 Wn.2d 663, 231 P.2d 325 (1951), cert. denied 342 U.S. 876, 96 L.Ed. 659, 72 S. Ct. 167 (1951).

Plaintiffs next contend that Washington's taxing scheme, like West Virginia's, is facially discriminatory and/or internally inconsistent in relation to interstate transactions. Kalama and National contend this is so because they must bear a manufacturing tax on locally manufactured products which they sell out of state while local manufacturers selling only in state are exempt from the manufacturers tax. Xerox and National contend that they are or may be subject to a manufacturing or other tax in their home states, and thereafter must pay the wholesaling tax on merchandise sold in the state of Washington. Plaintiffs respectively contend the net result of the situations thus projected is a form of multiple taxation anathematic to the Commerce Clause.

Again, this court must disagree. It appears that the last paragraph of the *Armco* decision effectively dissipates plaintiffs' arguments in this respect. The Supreme Court there states:

> "It is true, as the State of Washington appearing as amicus curiae points out, that Armco would be faced with the same situation that it complains of here if Ohio (or some other state) imposed a tax only upon manufacturing, while West Virginia imposed a tax only on wholesaling. In that situation Armco would bear two taxes, while West Virginia sellers would bear only one.

But such a result would not arise from impermissible discrimination against interstate commerce but from fair encouragement of in-state business. What we said in *Boston Stock Exchange,* 429 U.S. at 336-337 is relevant here as well.

> "Our decision today does not prevent the states from structuring their tax systems to encourage the growth and development of intrastate commerce and industry. Nor do we hold that a state may not compete with other states for a share of interstate commerce; such competition lies at the heart of a free trade policy. We hold only that in the process of competition no state may discriminatorily tax the products manufactured or the business operations performed in any other state."

Plaintiffs next contend that the respective taxes are not fairly apportioned.

With respect to the manufacturing tax the *Armco* court, in a footnote (No. 6), pointed to *Complete Auto Transit Inv.* [sic] *v. Brady, supra,* and observed that a manufacturing tax might logically be expected to be larger than a gross receipts tax, since an in-state manufacturing benefits more from the services provided by the state than does a transient wholesaler. Noteably, too, the Supreme Court of this state has upheld our manufacturing tax against varying attacks of inadequate or lack of apportionment. *Crown Zellerbach Corp. v. State,* 45 Wn.2d 749, 278 P.2d 305 (1954); *Crown Zellerback* [sic] *Corp. v. State,* 53 Wn.2d 813, 328 P.2d 884 (1958); *St. Regis Paper Co. v. State,* 63 Wn.2d 564, 388 P.2d 520 (1964); *Reynolds Metals Company v. State,* 65 Wn.2d 882, 400 P.2d 310 (1965) (app. dismissed 382 U.S. 160, 15 L.Ed. 2d 228, 86 S.Ct. 315); *P.U.D No. 2 of Grant Cy. v. State,* 82 Wn.2d 232, 510 P.2d 206 (1973).

To the same effect, only on a broader scale, including apportionment to some extent, the United States Supreme Court, as well as our State Supreme Court, has upheld the constitutional validity of our wholesaling and/or retailing

tax. *General Motors s. Washington,* 377 Wash. 436, 12 L.2d. 2d 430, 84 S.Ct. 1564 (1964) [sic]; *Standard Pressed Steel v. Department of Revenue,* 419 U.S. 560, 42 L.Ed. 2d 719, 95 S.Ct. 706 (1975); *B.F. Goodrich v. State,* 38 Wn.2d 663, 231 P.2d 325 (1951) (certc. [sic] denied 342 U.S. 876, 96 L.Ed. 659,72 S.Ct. 167); *U.S. Steel Corp. v. State,* 51 Wn.2d 224, 316 P.2d 1099 (1957) (appeal dismissed 358 U.S. 46, 3 L.Ed. 2d 44, 79 S.Ct. 40 (1958); *Fiberboard Paper Prods. Corp. v. State,* 66 Wn.2d 87, 401 P.2d 623 (1965); *Chicago Bridge & Iron Co. v. Dept. of Revenue,* 98 Wn.2d 814, 659 P.2d 463 (1983).

This Court does not believe that the United States Supreme Court in *Armco* undertook a significant retreat, by implication or otherwise, from *General Motors Corp. v. Washington, supra.* Neither does it appear that the injection of such theories as "internal consistency," "facial discrimination," or "substantially equivalent events," when cast against the backdrop of this state's challenged tax structure, produce the result sought by respective plaintiffs.

Furthermore, it is beyond the province of this court to modify oroverrule [sic] extant and applicable decisions of this state's Supreme Court.

Plaintiffs Motion for Summary Judgment is accordingly denied. The state's prayer for dismissal is granted.

Dated June 24, 1985.

/s/ ORRIS HAMILTON
Superior Court Judge Pro Tem

Appendix C

JUDGMENT OF THE SUPERIOR COURT OF THURSTON COUNTY, WASHINGTON

IN THE SUPERIOR COURT OF
WASHINGTON FOR THURSTON COUNTY

NATIONAL CAN CORPORATION, et al.,
A Consolidated Action,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01900-7
SUMMARY JUDGMENT

I.

HEARING

1.1 **Date.** May 22, 1985.

1.2 **Notice of Hearing.** Hearing was upon proper notice, it being agreed by the parties that there was no genuine issue of material fact and that the matter would be heard on cross motions for summary judgment.

1.3 **Appearances.** John T. Piper and D. Michael Young of Bogle & Gates for the plaintiffs, and Kenneth O. Eikenberry, Attorney General, and William B. Collins and Leland T. Johnson, Assistant Attorneys General, for the defendant.

1.4 **Purpose.** To consider plaintiffs' and defendant's cross motions for summary judgment.

1.5 **Record Before The Court.** The record before the Superior Court consisted of the following documents:

(a) The Consolidated Plaintiff's Complaints for Refund of Taxes

(b) The Consolidated Plaintiffs' First Amended Complaints for Refund of Taxes

(c) Stipulation of Facts Concerning National Can Corporation
(d) Stipulation of Facts Concerning Xerox Corporation
(e) Stipulation of Facts Concerning Kalama Chemical, Inc.
(f) Affidavit of Ted W. Palmer
(g) Affidavit of Thomas J. Wenglein
(h) Affidavit of Edward R. McMillan
(i) Affidavit of Lyle Jacobsen
(j) Affidavit of Glenn Harris
(k) Affidavit of William B. Collins
(l) Affidavit of Gary O'Neil, dated May 20, 1985
(m) Affidavit of Donn Smallwood
(n) Affidavit of Leland T. Johnson
(o) Affidavit of Daniel Keller
(p) Stipulation of Exhibits and the exhibits described therein
(q) Affidavits of John T. Piper in The Consolidated Cases
(r) Affidavits of Susan Lehr in The Consolidated Cases
(s) Affidavits of Franklin G. Dinces in The Consolidated Cases
(t) Affidavit of Franklin G. Dinces in Support of Plaintiffs' Motion to Compel Production of Documents by Defendant
(u) Second Stipulation Re: Pending Claims

II.

FINDINGS

The Court having considered the record before it and the briefs and arguments of counsel finds:

2.1 **Consolidation.** This action is comprised of 53 separate actions which were consolidated by Order of this Court dated July 19, 1985. Based on the Order for Consolidation this judgment shall apply to each of the consolidated cases.

2.2 **No Issue of Fact.** There is no genuine issue as to any material fact in this case.

2.3 **Judgment.** The State of Washington, Department of Revenue, is entitled to judgment as a matter of law.

III.

ORDER AND JUDGMENT

On the basis of the foregoing Findings and in accordance with this Court's Memorandum Opinion dated June 24, 1985, it is ORDERED, ADJUDGED AND DECREED that:

3.1 The imposition of Washington's business and occupation tax as applied to the plaintiffs does not violate the Commerce Clause, Art. I, § 8, cl. 3 of the United States Constitution.

3.2 The defendant's Motion for Summary Judgment is granted.

3.3 The plaintiffs' Motion for Summary Judgment is denied.

DONE this 19th day of July, 1985.

/s/ Orris L. Hamilton
ORRIS L. HAMILTON
Superior Court Judge Pro Tem

Presented by:

/s/ William B. Collins
Wiiliam B. Collins
Assistant Attorney General
Attorney for Defendant.

Approved as to Form;
Notice of Presentation Waived:
/s/ John T. Piper
John T. Piper
Attorney for Plaintiffs

IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

NATIONAL CAN CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01900-7

XEROX CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01916-3

KALAMA CHEMICAL, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01891-4

STIPULATION AND ORDER
FOR CONSOLIDATION

C-5

A.H. ROBINS COMPANY, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
Defendant.

NO. 84-2-01921-0

ADVANCED TECHNOLOGY LABORATORIES, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01911-2

ALASKAN COPPER COMPANIES, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00863-1

C-6

ALLIS-CHALMERS CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01924-4

ALPAC CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00870-4

AMF, INCORPORATED, et al.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01898-1

C-7

AMERICAN CYANAMID COMPANY, et al.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01890-6

ARMSTRONG WORLD INDUSTRIES, INC., et al.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01922-8

ASC PACIFIC, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01926-1

C-8

BASIC AMERICAN FOODS, INC.,
aka AMPCO FOODS, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01901-5

BETHLEHEM STEEL CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01926-1

CHRYSLER CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01889-2

CLARK EQUIPMENT COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01909-1

COMINCO AMERICAN, INC., et al.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01904-0

CUMMINS ENGINE COMPANY, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01912-1

DATA I/O CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01893-1

FENTRON BUILDING PRODUCTS CO.,
Plaintiff,

vs.

STATE OF WASHINGTON,
Defendant.

NO. 84-2-01907-4

THE FIRESTONE TIRE & RUBBER CO.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00864-0

FORD MOTOR COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01895-7

FOSECO, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01930-9

G. HEILEMAN BREWING CO., INC.,
and RAINIER BREWING CO.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01923-6

GENERAL BREWING COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01915-5

GENERAL ELECTRIC COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
Defendant.

NO. 85-2-00865-8

HEATH TECNA AEROSPACE CO.,
Plaintiff,

vs.

STATE OF WASHINGTON,
Defendant.

NO. 84-2-01908-2

HONEYWELL, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00866-6

INTERNATIONAL PAPER COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01888-4

KORRY ELECTRONICS CO.,
Plaintiff,

vs.

STATE OF WASHINGTON,
Defendant.

NO. 84-2-01892-2

LONE STAR INDUSTRIES, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01903-1

LONGVIEW FIBRE COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01917-1

MARS, INC., et al.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00919-1

E.M. MATSON, JR.,
d/b/a E.M. MATSON JR., CO.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01920-1

MATTEL, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01931-7

MILLER BREWING COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01913-9

MURRAY PACIFIC CORPORATION, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00921-2

NOEL CANNING CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01928-7

NORTH PACIFIC PROCESSORS, INC., et al.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01925-2

PABST BREWING COMPANY and
OLYMPIA BREWING COMPANY,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01918-0

PETER PAN SEAFOODS, INC.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01902-3

QUINTON INSTRUMENT COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
Defendant.

NO. 84-2-01919-8

R. A. HANSON COMPANY, INC.,
and RAHCO, INC.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01894-9

C-18

REYNOLDS METALS CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00867-4

SCOTT PAPER COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

NO. 85-2-00879-8

SQUARE D COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,

Defendant.

NO. 85-2-00868-2

C-19

E. R. SQUIBB & SONS, INC. et al.,
Plaintiffs,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00869-1

TRIDENT SEAFOODS CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01929-5

U. S. OIL & REFINING CO.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01927-9

C-20

W. R. GRACE & CO.,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 85-2-00920-4

WELCH FOODS INC., A COOPERATIVE,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01932-5

WESTERN STEEL CASTING COMPANY,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01896-5

WESTINGHOUSE ELECTRIC CORPORATION,
Plaintiff,

vs.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.
NO. 84-2-01899-0

The plaintiffs to the above referenced actions, by their attorneys, BOGLE & GATES and John T. Piper, and the defendant to the above referenced actions, by its attorneys, KENNETH O. EIKENBERRY, Attorney General, and William B. Collins, Assistant Attorney General, hereby stipulate as follows:

1. All of the above referenced actions shall be consolidated, pursuant to CR 42(a), under Cause No. 84-2-01900-7.

2. All pleadings for the consolidated cases filed subsequent to the Order of Consolidation made pursuant to this Stipulation shall be filed under Cause No. 84-2-01900-7 except as provided in paragraphs 3 and 4 herein.

3. A copy of this Stipulation And Order For Consolidation shall be filed in each of the above referenced actions being consolidated.

4. A copy of the Summary Judgment entered in Cause No. 84-2-01900-7 shall be filed in each of the above referenced actions being consolidated.

DATED this 19th day of July, 1985.

KENNETH O. EIKENBERRY
Attorney General
State of Washington
/s/ William B. Collins
William B. Collins
Assistant Attorney General
Attorney for Defendant

BOGLE & GATES
/s/ John T. Piper
John T. Piper
Attorney for Plantiffs

ORDER OF CONSOLIDATION

Based on the foregoing Stipulation it is hereby ORDERED, ADJUDGED AND DECREED as follows:

1. All of the above referenced actions shall be consolidated, pursuant to CR 42(a), under Cause No. 84-2-01900-7.

2. All pleadings for the consolidated cases filed subsequent to this Order of Consolidation shall be filed under Cause No. 84-2-01900-7 except as provided in paragraphs 3 and 4 herein.

3. A copy of this Stipulation And Order For Consolidation shall be filed in each of the above referenced actions being consolidated.

4. A copy of the Summary Judgment entered in Cause No. 84-2-01900-7 shall be filed in each of the above referenced actions being consolidated.

DATED this 19th day of July, 1985.

/s/ Orris L. Hamilton
ORRIS L. HAMILTON, Judge Pro Tem

KENNETH O. EIKENBERRY
Attorney General
State of Washington

/s/ William B. Collins
William B. Collins
Assistant Attorney General
Attorney for Defendant

BOGLE & GATES

/s/ John T. Piper
John T. Piper
Attorney for Plaintiffs

Appendix D

NOTICE OF APPEAL

[Filed May 22, 1986]

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

NATIONAL CAN CORPORATION *et al.*,
Appellants,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Respondent.

No. 51910-2

NOTICE OF APPEAL

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

Notice is hereby given that National Can Corporation, Advanced Technology Laboratories, Inc.; A.H. Robins Company, Incorporated; Alaskan Copper Companies, Inc.; Alaska Pacific Seafoods, Inc.; Allis-Chalmers Corporation; Alpac Corporation; American Cyanamid Company; AMF Head Sportswear, Inc.; AMF, Incorporated; AMF Voit, Inc.; Armstrong World Industries, Inc.; ASC Pacific, Inc.; Basic American Foods, Inc. aka AMPCO Foods, Inc.; Ben Hogan Company; Bethlehem Steel Corporation; Charles of the Ritz Group, Ltd. and its operating subsidiaries; Chrysler Corporation; Clark Equipment Company; Cominco American, Incorporated; Cominco Electronic Materials, Incorporated; Cummins Engine Company, Inc.; Data I/O Corporation; Edward Weck and Company, Inc.; E.R. Squibb & Sons, Inc.; Fentron Building Products Co., a dividion of Criton Technologies; The Firestone Tire and Rubber Co.; Ford Motor Company; Foseco, Inc.; General Brewing

Company; General Electric Company; G. Heilman Brewing Company, Inc.; Heath Techna Aerospace Co., a division of Criton Technologies; Honeywell Inc.; International Paper Company; Jacqueline Cochran, Inc.; Kalama Chemical, Inc.; Kal Kan Foods, Inc.; Kenai Salmon Packing Company; Korry Electronics Co., a division of Criton Technologies; Lone Star Industries, Inc.; Longview Fibre Company; Mars, Inc.; E.M. Matson, Jr., Co.; Mattel, Inc.; Miller Brewing Company; Murray Pacific Corporation; National Can Corporation; Noel Canning Corporation; North Pacific Processors, Inc.; Peter Pan Seafoods, Inc.; Olympia Brewing Company; Pabst Brewing Company; Paragon Electric Co., Inc.; Quinton Instrument Company; R.A. Hanson Company, Inc.; RAHCO, Inc.; Rainier Brewing Co.; Reynolds Metals Corporation; Scott Paper Company; Shulton, Inc.; Spacelabs, Inc.; Square D Company; Thomasville Furniture Industries, Inc.; Trident Seafoods Corporation; Uncle Ben's, Inc.; U.S. Oil & Refining Co.; Welch Foods, Inc., a cooperative; Western Steel Casting Company; Westinghouse Electric Corporation; W.R. Grace & Co.; Xerox Corporation; appellants herein, hereby appeal to the Supreme Court of the United States from the final order of the Supreme Court of the State of Washington, entered herein on March 6, 1986, affirming the Superior Court of Thurston County's Summary Judgment entered July 19, 1985.

This appeal is taken pursuant to 28 U.S.C. §1257(2).

DATED this 22nd day of May, 1986.

Bogle & Gates

/s/ D. Michael Young
D. Michael Young

/s/ Franklin G. Dinces
Franklin G. Dinces

AFFIDAVIT OF SERVICE

STATE OF WASHINGTON
COUNTY OF KING

I hereby affirm and certify that service of the foregoing Notice of Appeal to the Supreme Court of the United States was made on the only party required to be served, by mailing true copies thereof to Respondent's attorneys, Kenneth O. Eikenberry, Attorney General, addressed to him at his office, Temple of Justice, Olympia, Washington 98504; and William B. Collins, Assistant Attorney General, addressed to him at his office, 415 General Administration Building, AX-02, Olympia, WA 98504, in the regular United States mail, postage prepaid, this 22nd day of May, 1986.

/s/ D. Michael Young
D. Michael Young
Attorney for Appellant

SUBSCRIBED AND SWORN TO before me this 22nd day of May, 1986.

/s/ Devon C. McDonald
Notary Public for the State of Washington residing at Bellevue.

Appendix E

Constitutional and Statutory Provisions

United States Constitution, Article I, Section 8, Clause 3 ("the Commerce Clause"):

> The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes.

Revised Code of Washington (1983):

> §82.02.030 Additional tax rates.
> (1) The rate of the additional taxes under RCW 82.04.2901 . . . shall be seven percent;
> . . . .

> §82.04.220 Business and occupation tax imposed.
> There is levied and shall be collected from every person a tax for the act or privilege of engaging in business activities. Such tax shall be measured by the application of rates against value of products, gross proceeds of sales, or gross income of the business, as the case may be.

> §82.04.230 Tax upon extractors.
> Upon every person engaging within this state in business as an extractor; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, extracted for sale or for commercial or industrial use, multiplied by the rate of forty-four one-hundredths of one percent.

The measure of the tax is the value of the products, including byproducts, so extracted, regardless of the place of sale or the fact that deliveries may be made to points outside the state.

§82.04.240 Tax on manufacturers.

Upon every person except persons taxable under subsections (2), (3), (4), (5), (7), (8), or (9) of RCW 82.04.260 engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of forty-four one-hundredths of one percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

§82.04.250 Tax on retailers.

Upon every person except persons taxable under RCW 82.04.260(8) engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of forty-four one-hundredths of one percent. . . .

§82.04.260 Tax on buyer and wholesaler of wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye, and barley—Flour and oil manufacturers—Seafood products manufacturers—Fruit and vegetable processors—Research and development organizations—Perishable meat products processors and wholesalers—Nuclear fuel assemblies—Travel agents—Certain international activities—Stevedoring and

associated activities — Low-level waste disposers — Insurance agents, brokers, and solicitors.

(1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, corn, rye and barley, but not including any manufactured or processed products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of one one-hundredth of one percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, soybeans into soybean oil, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour or oil manufactured, multiplied by the rate of one-eighth of one percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of one-quarter of one percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of one-eighth of one percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing or dehydrating fresh fruits and vegetables; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen or dehydrated multiplied by the rate of three-tenths of one percent.

. . . .

(7) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of thirty-three one-hundredths of one percent.

. . . .

§ 82.04.270 Tax on wholesalers, distributors.

(1) Upon every person except persons taxable under subsections (1) or (8) of RCW 82.04.260 engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of forty-four one-hundredths of one percent.

(2) The tax imposed by this section is levied and shall be collected from every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales: *Provided,* That the tax designated in this section may not be assessed twice to the same person for the same article. The amount of the tax as to such persons shall be computed by multiplying forty-four one-hundredths of one percent of the value of the article so distributed as of the time of such distribution: *Provided,* That persons engaged in the activities described in this subsection shall not be liable for the tax imposed if by proper invoice it can be shown that they have purchased such property from a wholesaler who has paid a business and occupation tax to the state upon the same articles. This proviso shall not apply to purchases from

manufacturers as defined in RCW 82.04.110. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers: *Provided further,* That delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets.

§ 82.04.290 Tax on other business or service activities.

Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.50 percent: *Provided,* That this tax shall be imposed only if all of the amendments contained in sections 1, 3, and 4 of this 1983 act become law. This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

§ 82.04.2901 Additional tax imposed.

There is levied and shall be collected from every person, other than persons taxed under RCW 82.04.2904, for the act or privilege of engaging in business activities, as a part of the tax imposed by the provisions of RCW 82.04.250, an additional tax equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under the provisions of RCW 82.04.250: *Provided,* That as to such persons making sales at retail in border counties other than retail sales of telephone services, as defined in RCW 82.04.065, such additional tax shall be levied and collected from such persons with respect to such sales in border counties in an amount equal to thirty-two percent multiplied by the tax payable under the provisions of RCW 82.04.250: *Provided further,* That the additional tax under this section shall be imposed only if all of the amendments contained in sections 1 through 3 of this 1983 act become law.

To facilitate collection of this additional tax, the department of revenue is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the amount to the nearest one-thousandth of one percent of the additional tax hereby imposed, adjusting ten-thousandths equal to or greater than five ten-thousandths to the greater thousandth.

§ 82.04.2904 Additional tax imposed.

(1) There is levied and shall be collected from every person for the act or privilege of engaging in business activities, as a part of the tax imposed under RCW 82.04.220 through 82.04.240, inclusive, and RCW 82.04.260 through 82.04.280, inclusive, an additional tax equal to ten percent multiplied by the tax payable under RCW 82.04.220 through 82.04.240, inclusive, and RCW 82.04.260 through 82.04.280, inclusive: *Provided,* That this additional tax shall be imposed only if all

of the amendments contained in sections 1, 2, and 4 of this 1983 act become law.

(2) There is also levied and shall be collected from every person for the act or privilege of engaging in the business activity of making sales at retail which are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as a part of the tax imposed under RCW 82.04.250, an additional tax equal to ten percent multiplied by the tax payable on those activities under RCW 82.04.250: *Provided,* That this additional tax shall be imposed only if all of the amendments contained in sections 1, 2, and 4 of this 1983 act become law.

(3) To facilitate collection of these additional taxes, the department of revenue is authorized to adjust the basic rates of persons to which this section applies in such manner as to reflect the amount to the nearest one-thousandth of one percent of the additional tax hereby imposed, adjusting ten-thousandths equal to or greater than five ten-thousandths to the greater thousandth.

§ 82.04.4295 Deductions—Manufacturing activities completed outside the United States.

In computing tax there may be deducted from the measure of tax by persons subject to payment of the tax on manufacturers pursuant to RCW 82.04.240, the value of articles to the extent of manufacturing activities completed outside the United States, if:

(1) Any additional processing of such articles in this state consists of minor final assembly only; and

(2) In the case of domestic manufacture of such articles, can be and normally is done at the place of initial manufacture; and

(3) The total cost of the minor final assembly does not exceed two percent of the value of the articles; and

(4) The articles are sold and shipped outside the state.

§82.04.440 Persons taxable on multiple activities.

Every person engaged in activities which are within the purview of the provisions of two or more of section RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in: *Provided,* That persons taxable under RCW 82.04.250 or 82.04.270 shall not be taxable under RCW 82.04.230, 82.04.240 or subsection (2), (3), (4), (5), or (7) of RCW 82.04.260 with respect to extracting or manufacturing of the products so sold, and that persons taxable under RCW 82.04.240 or RCW 82.04.260 subsection (4) shall not be taxable under RCW 82.04.230 with respect to extracting the ingredients of the products so manufactured.

§82.04.450 Value of products, how determined.

(1) The value of products, including byproducts, extracted or manufactured shall be determined by the gross proceeds derived from the sale thereof whether such sale is at wholesale or at retail, to which shall be added all subsidies and bonuses received from the purchaser or from any other person with respect to the extraction, manufacture, or sale of such products or byproducts by the seller, except:

(a) Where such products, including byproducts, are extracted or manufactured for commercial or industrial use;

(b) Where such products, including byproducts, are shipped, transported or transferred out of the state, or to another person, without prior sale or are sold under circumstances such that the gross proceeds from the sale are not indicative of the true value of the subject matter of the sale.

(2) In the above cases the value shall correspond as nearly as possible to the gross proceeds from sales in this state of similar products of like quality and character, and in similar quantities by other taxpayers, plus the amount of subsidies or bonuses ordinarily payable by the purchaser or by any third person with respect to the extraction, manufacture, or sale of

such products: *Provided,* That the value of a product manufactured or produced for purposes of serving as a prototype for the development of a new or improved product shall correspond: (a) To the retail selling price of such new or improved product when first offered for sale; or (b) to the value of materials incorporated into the prototype in cases in which the new or improved product is not offered for sale. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such values.

§ 82.04.460 Business within and without state — Apportionment.

(1) Any person rendering services taxable under RCW 82.04.290 and maintaining places of business both within and without this state which contribute to the rendition of such services shall, for the purpose of computing tax liability under RCW 82.04.290, apportion to this state that portion of his gross income which is derived from services rendered within this state. Where such apportionment cannot be accurately made by separate accounting methods, the taxpayer shall apportion to this state that proportion of his total income which the cost of doing business within the state bears to the total cost of doing business both within and without the state.

(2) Notwithstanding the provision of subsection (1) of this section, persons doing business both within and without the state who receive gross income from service charges, as defined in RCW 63.14.010(8) (relating to amounts charged for granting the right or privilege to make deferred or installment payments) or who receive gross income from engaging in business as financial institutions within the scope of chapter 82.14A RCW (relating to city taxes on financial institutions) shall apportion or allocate gross income taxable under RCW 82.04.290 to this state pursuant to rules promulgated by the department consistent with uniform rules for apportionment or allocation developed by the states.

(3) The department shall by rule provide a method or methods of apportioning or allocating gross income derived from sales of telephone services taxed under this chapter, if the gross proceeds of sales subject to tax under this chapter do not fairly represent the extent of the taxpayer's income attributable to this state. The rules shall be, so far as feasible, consistent with the methods of apportionment contained in this section and shall require the consideration of those facts, circumstances, and apportionment factors as will result in an equitable and constitutionally permissible division of the services.

§ 82.04.500 Tax part of operating overhead.

It is not the intention of this chapter that the taxes herein levied upon persons engaging in business be construed as taxes upon the purchasers or customers, but that such taxes shall be levied upon, and collectible from, the person engaging in the business activities herein designated and that such taxes shall consititute a part of the operating overhead of such persons.

Appendix F

PARTIES TO THE PROCEEDING

APPELLANTS:

Advanced Technology Laboratories, Inc.
A.H. Robins Company, Incorporated
Alaskan Copper Companies, Inc.
Alaska Pacific Seafoods, Inc.
Allis-Chalmers Corporation
Alpac Corporation
American Cyanamid Company
AMF Head Sportswear, Inc.
AMF, Incorporated
AMF Voit, Inc.
Armstrong World Industries, Inc.
ASC Pacific, Inc.
Basic American Foods, Inc. aka AMPCO Foods, Inc.
Ben Hogan Company
Bethlehem Steel Corporation
Charles of the Ritz Group, Ltd. and its operating subsidiaries
Chrysler Corporation
Clark Equipment Company
Cominco American, Incorporated
Cominco Electronic Materials, Incorporated
Cummins Engine Company, Inc.
Data I/O Corporation
Edward Weck and Company, Inc.
E.R. Squibb & Sons, Inc.
Fentron Building Products Co., a division of Criton Technologies
The Firestone Tire and Rubber Co.
Ford Motor Company
Foseco, Inc.
General Brewing Company
General Electric Company
G. Heileman Brewing Company, Inc.
Heath Techna Aerospace Co., a division of Criton Technologies

Honeywell Inc.
International Paper Company
Jacqueline Cochran, Inc.
Kalama Chemical, Inc.
Kal Kan Foods, Inc.
Kenai Salmon Packing Company
Korry Electronics Co., a division of Criton Technologies
Lone Star Industries, Inc.
Longview Fibre Company
Mars, Inc.
E.M. Matson, Jr., Co. (a sole proprietorship)
Mattel, Inc.
Miller Brewing Company
Murray Pacific Corporation
National Can Corporation
Noel Canning Corporation
North Pacific Processors, Inc.
Peter Pan Seafoods, Inc.
Olympia Brewing Company
Pabst Brewing Company
Paragon Electric Co., Inc.
Quinton Instrument Company
R.A. Hanson Company, Inc.
RAHCO, Inc.
Rainier Brewing Co.
Reynolds Metals Company
Scott Paper Company
Shulton, Inc.
Spacelabs, Inc.
Square D Company
Thomasville Furniture Industries, Inc.
Trident Seafoods Corporation
Uncle Ben's, Inc.
U.S. Oil & Refining Co.
Welch Foods, Inc., a cooperative
Western Steel Casting Company
Westinghouse Electric Corporation
W.R. Grace & Co.

Xerox Corporation

APPELLEE:

State Of Washington, Department of Revenue

Appendix G

Designation of Corporate Relationships

Appellants state that this is its original Designation of Corporate Relationships, listing appellants' parents, subsidiaries and affiliates, except for wholly-owned subsidiaries.

APPELLANT:	Advanced Technology Laboratories, Inc.
PARENT:	Squibb Corporation
SUBSIDIARY:	International Biomedics, Inc.
AFFILIATES:	Bach Mueller Company California Public Screening Inc. Charles of the Ritz S.A. Manufactureros Quimicos Farmaceuticos S.A. Ohmaco S.A. Sino American Shanghai Standard Pharmaceuticals Ltd. Squibb Nova Ltd. Squibb Connaught Squibb Industria Quimica, S.A. Squibb Pakistan Ltd. Squibb (Nigeria) Ltd. Squibb of Bangladesh Ltd. Symbotics Ltd. Von Heyden Gesellschaft Mit Beschrankter Haftung
APPELLANT:	A.H. Robins Company, Incorporated

PARENTS:	Stock of A.H. Robins Company, Inc. is publicly traded on the New York Stock Exchange. Corporations owning 5% or more of Appellant are: Central Fidelity Bank Republic Bank Corporation
SUBSIDIARY:	Lee Laboratories, Inc.
AFFILIATES:	Eurand Italia S.p.A. Eurand International S.r.L. Eurand Microencapsulation, S.A. Pharia Industrial Company A.H. Robins Farmaceutica, S.A. Parfums Caron, S.A. Plastique et Parfum, S.A. A.H. Robins Showa Co., Ltd.
APPELLANT:	Alaskan Copper Companies, Inc.
PARENT:	None
SUBSIDIARY:	Leschi Boat Service
AFFILIATES:	None

APPELLANT:	Alaska Pacific Seafoods, Inc.
PARENTS:	North Pacific Processors, Inc. owned by Marubeni Corporation, a Japanese corporation (Marubeni-Japan)
SUBSIDIARIES:	None
AFFILIATE:	Kenai Salmon Packing Co.
APPELLANT:	Allis-Chalmers Corporation
PARENTS:	Allis-Chalmers Corporation stock is traded on the New York Stock Exchange. No corporate shareholder owns 5% or more of Appellant's stock.
SUBSIDIARIES:	Orissa Sponge Iron Limited AC Furesa Andina S.A. AC Iberia, S.A. AFNE - Allis S.A.
AFFILIATES:	Svenska Fluidcarbon AB AAF Heat Recovery Limited

APPELLANT:	Alpac Corporation
PARENT:	Skinner Corporation

Alpac Corporation has no subsidiaries or affiliates.

APPELLANT:	American Cyanamid Company
PARENTS:	American Cyanamid Company stock is publicly traded on the New York Stock Exchange. No corporation owns 5% or more of Appellant's stock.
SUBSIDIARIES:	Cyanamid Iberia, S.A. Cyanamid India, Ltd. Cyanamid Italia S.p.A. Cyanamid Fothergill Ltd. CYRO Industries B. Braun-Dexon G.m.b.H. Cyanamid Taiwan Corp. TDF Tiofine B.V. Mitsui-Cyanamid Ltd. Lederle (Japan) Ltd. Societe Des Sutures Chirurgicales Robert & Carriere-Lederle
AFFILIATES:	None
APPELLANT:	AMF Head Sportswear, Inc.
PARENTS:	Minstar, Inc. The following are the only corporations owning 5% or more, or beneficial interests in groups

owning 5% or more, of Minstar, Inc.:

Jacobs Industries, Inc.
MNR Holdings, Inc.
Leucadia National Corporation
LNC Investments, Inc.
Charter National Life Insurance Company
American Investment Company
Leucadia, Inc.
Uintah National Corporation
TLC Associates
The Bellfonte Company
Pentad, Inc.

SUBSIDIARIES: None

AFFILIATES: Pioneer Corp.
Enron Corporation
Tidewater, Inc.

APPELLANT: AMF, Incorporated

PARENTS: Minstar, Inc. The following are the only corporations owning 5% or more, or beneficial interests in groups owning 5% or more, of Minstar, Inc.:

Jacobs Industries, Inc.
MNR Holdings, Inc.
Leucadia National Corporation
LNC Investments, Inc.

Charter National Life Insurance Company
American Investment Company
Leucadia, Inc.
Uintah National Corporation
TLC Associates
The Bellfonte Company
Pentad, Inc.

SUBSIDIARIES: None

AFFILIATES: Pioneer Corp.
Enron Corporation
Tidewater, Inc.

APPELLANT: AMF Voit, Inc.

PARENTS: Minstar, Inc. The following are the only corporations owning 5% or more, or beneficial interests in groups owning 5% or more, of Minstar, Inc.:

Jacob Industries, Inc.
MNR Holdings, Inc.
Leucadia National Corporation
LNC Investments, Inc.
Charter National Life Insurance Company
American Investment Company
Leucadia, Inc.
Uintah National Corporation
TLC Associates
The Bellfonte Company
Pentad, Inc.

SUBSIDIARIES: None

AFFILIATES:	Pioneer Corp. Enron Corporation Tidewater, Inc.
APPELLANT:	Armstrong World Industries, Inc.
PARENTS:	Armstrong World Industries, Inc. stock is traded on the New York, Philadelphia, and Pacific Stock Exchanges. No corporation owns 5% or more of Appellant.
SUBSIDIARIES:	Armstrong Cork Espana, S.A. Armstrong World Industries Pty. Ltd.
AFFILIATES:	Inarco Limited Armstrong Cork (Ireland) Limited Armstrong World Industries, G.m.b.H.
APPELLANT:	ASC Pacific, Inc.
PARENTS:	BHP Holdings (USA) Inc. (Wholly owned by Broken Hill Proprietary Company, Ltd., an Australian corporation.)
SUBSIDIARIES:	None
AFFILIATES:	Mineracao Wares Utah Carriers

Marcona Conveyor Corporation
Waipipi Iron Sands
BHP Minerals
Hunter Valley Aluminum
COCE
IDM
Rheem
Pt. Rheem Indonesia
Rheem NZ
Amalgamated Superannuation Fund
Rydalmere Nominees
Lypaght (Taiwan)
John Lysaght (Malaysia)
John Lysaght (PNG)
RMI Holdings
John Lysaght (South Pacific)
Societe Industrielle
Clinton International Corporation

APPELLANT: Basic American Foods, Inc. aka AMPCO Foods, Inc.

Basic American Foods, Inc. is a privately held corporation. No corporation owns 5% or more of Appellant's stock, and Appellant has no subsidiaries or affiliates.

APPELLANT: Ben Hogan Company

PARENTS: Minstar, Inc. The following are the only corporations owning 5% or more, or beneficial interests in groups owning 5% or more, of Minstar, Inc.:

Jacobs Industries, Inc.
MNR Holdings, Inc.
Leucadia National Corporation
LNC Investments, Inc.
Charter National Life Insurance Company
American Investment Company
Leucadia, Inc.
Uintah National Corporation
TLC Associates
The Bellfonte Company
Pentad, Inc.

SUBSIDIARIES: None

AFFILIATES: Pioneer Corp.
Enron Corporation
Tidewater, Inc.

APPELLANT: Bethlehem Steel Corporation

PARENTS: Bethlehem Steel Corporation stock is publicly traded on the New York Stock Exchange. The only corporation owning 5% or more of Appellant is United Banks of Colorado, Inc.

SUBSIDIARIES: Consep Membranes, Inc.
Iron Ore Land Company
Presque Isle Corporation
Seadrill, Inc.
Southeast, Incorporated
Nubeth Joint Venture

AFFILIATES:	Bethlehem Singapore Private Limited
	Erie Mining Company, A Limited Partnership
	Empreendimentos Brasileiros de Mineracao S.A. - E.B.M.
	Mineracoes Brasileiras Revnidas - MBR
	G&A Limited Partnership III-A
	Griffin-Alexander International, Inc.
	Iron Ore Company of Canada
	Northern Land Company, Limited
	La Compagnie de Telephone Ungava
	Schefferville Power Company
	Twin Falls Power Corporation Limited
	Labrador Telephone Co.
	Met-Mex Penoles. S.A. de C.V.
	Minera Apolo, S.A. de C.V.
	Restauradora de las Minas de Catorce, S.A. de C.V.
	Thailand Offshore Joint Venture
	Walbridge Coatings, an Illinois Partnership
	Rig V Limited Partnership
	Nordex Joint Venture
	Rig VI Limited Partnership
	Hibbing Taconite Company
	Ontario Iron Company
APPELLANT:	Charles of the Ritz, Ltd. and its operating subsidiaries

PARENT:	Squibb Corporation
SUBSIDIARY:	Charles of the Ritz S.A.
AFFILIATES:	Bach Mueller Company California Public Screening Inc. International Biomedics, Inc. Manufactureros Quimicos Farmaceuticos S.A. Ohmaco S.A. Sino American Shanghai Standard Pharmaceuticals Ltd. Squibb Nova Ltd. Squibb Connaught Squibb Industria Quimica, S.A. Squibb Pakistan Ltd. Squibb (Nigeria) Ltd. Squibb of Bangladesh Ltd. Symbotics Ltd. Von Heyden Gesellschaft Mit Beschrankter Haftung
APPELLANT:	Chrysler Corporation
PARENTS:	No corporate shareholder owns 5% or more of Appellant's stock. Chrysler Corporation stock is traded on the New York Stock Exchange.

The subsidiaries of Chrysler Corporation (other than dealer corporations) are:

Diamond Star Motors Corporation
Mitsubishi Motors Corporation
Peugeot, S.A.
Officine Alfieri Maserati, S.p.A.

Chrysler Corporation has no affiliates.

APPELLANT:	Clark Equipment Company
PARENTS:	Clark Equipment Company stock is publicly traded on the New York Stock Exchange. The only entities owning 5% or more of Appellant are:
	Clark Equipment Company Leveraged Employee Stock Ownership Plan
	United Banks of Colorado, Inc.
	United Bank of Denver
	Dean LeBaron Trustee for Batterymach Financial Management
SUBSIDIARIES:	None
AFFILIATES:	VME Group, N.V.
	Transmisiones y Equipos Mecanicos S.A. de C.V.
APPELLANT:	Cominco American, Incorporated

PARENT: Cominco Holdings N.V.

Cominco American, Incorporated has no subsidiaries or affiliates.

APPELLANT: Cominco Electronic Materials, Incorporated

PARENTS: Cominco American, Incorporated
Cominco Holdings N.V.

Cominco Electronic Materials, Incorporated has no subsidiaries or affiliates.

APPELLANT: Cummins Engine Company, Inc.

PARENTS: Cummins Engine Company stock is traded on the New York Stock Exchange.

SUBSIDIARIES: CADEC Systems, Inc.
Consolidated Diesel Company
Cummins Nordeste, S.A.
Cummins Southwest, Inc.
Dampers Iberica S.A.
Dina Cummins, S.A.
Energy Technologies, Inc.
Hyperbar USA, INC.
Kirloskar-Cummins Limited
Onan Corporation
Adept Technologies, Inc.

AFFILIATES: None

APPELLANT: Data I/O Corporation

PARENTS: Data I/O Corporation's stock is publicly traded over the counter in the National Market System. The only entities owning 5% or more of Appellant's stock are:

Weiss, Pec & Greer
The Independent Investment Company, Ltd.

Appellant has no subsidiaries or affiliates.

APPELLANT: Edward Weck and Company, Inc.

PARENT: Squibb Corporation

SUBSIDIARY: Bach Mueller Company

AFFILIATES:
California Public Screening Inc.
Charles of the Ritz S.A.
International Biomedics, Inc.
Manufactureros Quimicos Farmaceuticos S.A.
Ohmaco S.A.
Sino American Shanghai Standard Pharmaceuticals Ltd.
Squibb Nova Ltd.
Squibb Connaught
Squibb Industria Quimica, S.A.
Squibb Pakistan Ltd.
Squibb (Nigeria) Ltd.
Squibb of Bangladesh Ltd.
Symbotics Ltd.

	Von Heyden Gesellschaft Mit Beschrankter Haftung
APPELLANT:	E.R. Squibb & Sons, Inc.
PARENT:	Squibb Corporation
SUBSIDIARIES:	None
AFFILIATES:	Bach Mueller Company California Public Screening Inc. International Biomedics, Inc. Manufactureros Quimicos Farmaceuticos S.A. Ohmaco S.A. Sino American Shanghai Standard Pharmaceuticals Ltd. Squibb Nova Ltd. Squibb Connaught Squibb Industria Quimica, S.A. Squibb Pakistan Ltd. Squibb (Nigeria) Ltd. Squibb of Bangladesh Ltd. Symbotics Ltd. Von Heyden Gesellschaft Mit Beschrankter Haftung
APPELLANT:	Fentron Building Products Co., a division of Criton Technologies
PARENTS:	Criton Technologies, a New York partnership Criton Corporation Royal Zenith Inc. Dyson Kissner Moran

B.S.D. Diversified
The Bowery Savings Bank

Appellant has no subsidiaries or affiliates.

APPELLANT: The Firestone Tire & Rubber Company

PARENTS: Stock of The Firestone Tire & Rubber Company is publicly traded on the New York, Midwest & Pacific Stock Exchanges. Corporations owning 5% or more of the Appellant are:

Banc One Corporation
Dean LeBaron d/b/a Batterymach Financial Management
United Banks of Colorado, Inc.

The subsidiaries of The Firestone Tire & Rubber Company other than Firestone stores are:

Industria Firestone de Costa Rica, S.A.
Firestone Italia S.p.A.
Liberian Metal Processing, Inc.
Firestone N.Z., Limited
Firestone Portuguesa S.A.R.L.
Firestone El Centenario, S.A.
Firestone Tire & Rubber Company of the Philippines
Firestone South Africa Limited

Firestone Hispania, S.A.
Siam Company Limited
Adela Investment Company

AFFILIATES:

Companhia Brasileira de Borracha CBB
Vulcopneu
Centre Auto Aubagne La Martelle S.A.R.L.
Sentrachem Limited
Hopewell International Insurance Ltd.
United Insurance Company
Lone Star Transport Lines, Inc.
Liberian Bank For Development & Investment

APPELLANT: Ford Motor Company

PARENTS: Ford Motor Company stock is publicly traded on the New York Stock Exchange. No corporate shareholder owns 5% or more of Appellant's stock.

SUBSIDIARIES: The subsidiaries of Ford Motor Company (other than wholly owned subsidiaries or corporations in which all the stock not held by Ford Motor Company is held by dealer-operators of Ford products) are:

Ford Motor Company of Canada, Limited

Ford Brasil, S.A.
Ford-Werke, A.G.
Ford Motor Company (Belgium) N.V.
Ford Motor Company A/S
O/Y Ford A/B
Ford Motor Company Aktiebolag
Ford Nederland B.V.
Eleveth Taconite Company
Ford Lio Ho Motor Company Ltd.
Renaissance Partnership
Starnet Corporation
Fairlane Woods Association (A Partnership)

AFFILIATES: None

APPELLANT: Foseco, Inc.

PARENTS: Foseco Minsep, Inc. (Owned by Foseco Minsep PLC which is traded in Great Britain.)

SUBSIDIARIES: None

AFFILIATES: Greaves Foseco Ltd.
Unicorn Industries PLC
HH Wardle (Metals) Ltd.
Foseco SAE
Foseco Japan
Fosven C.A.
Fosroc Tremco Pty Ltd.
Nonporite (NSW) Pty Ltd.
Nonporite (QLD) Pty Ltd.
Nonporite (WA) Pty Ltd.
Nonporite (SA) Pty Ltd.
Foseco S.A.
Promedo-Sifraco SNC
Craelius G.m.b.H.
Fosbel Inc.

Foseco Espanola S.A.
Foseco S.A. de C.V.
Foseco Hellas S.A.
Fosam Ltd.
Giesserei Dinest G.m.b.H.
Fosroc Construction Chemicals Private Shareholding Co. Ltd.
Foseco Argentina S.A.
Exotermicos Monclava S.A.
Foseco Industrial E Commercial Ltda.
Fosbel Brasil
Foseco Minsep UAE Private Ltd.
The Golden Gate Metallurgical Development Co.
Celtite Inc.
Foseco Korea Ltd.
Foseco Iran SSK
Fosbel Japan Ltd.
Fosbel Europe B.V.
Foseco Portugal Produtos Para Fundicao Lda.
Foseco Minsep Inc.
Van Mannekus Universal
Forbeton Rhone Alps S.A.R.L.
Forbeton Acquitaine S.A.R.L.
Indimant Industridiamanten G.m.b.H. Toyoda Van Moppes KK

APPELLANT: General Brewing Company

PARENTS: S&P Company (aka Keller Street Development Co.)

SUBSIDIARIES: None

AFFILIATES: Pabst Brewing Company
Falstaff Brewing Corporation

APPELLANT: General Electric Company

PARENTS: General Electric Company stock is publicly traded on the New York Stock Exchange. No corporation owns 5% or more of Appellant.

SUBSIDIARIES:
Reuter-Stokes Canada Limited
Electromat S.A.
Iran Electrical and Mechanical Services Co.
SADELMI-COGEPI Compagnia Generale Progettazioni e Installazioni S.p.A.
Societa Nazionale della Officine de Savigliano S.p.A.
General Electric de Mexico, S.A. de C.V.
Joint Venture with Industrias Unidas, S.A.
American General Electric (Nigeria) Ltd.
Construcciones Industriales de Maquinaria e Ingenieria, S.A.

Sadelmi-Nigeria Ltd.
General Electric Electromedicina, S.A.
Sociedad Iberica de Contrucciones Electricas
General Electrik Turk Anonim Sirketi
Sadelmi Limited
Adobe Canyon Corporation
Springer Mining Company
Osram Argentina Sociedad Anonima Commercial e Industrial
The China Car and Foundry Company Limited (In Liquidation)
CFM International, S.A.
Fabrications Mecaniques de l'Atlantique S.A.
SNEF Electro Mecanique (S.E.M.)
Elpro International Limited
IGE (India) Limited
Turbomotori Internazionale S.p.A.
C&C International, Ltd.
Drive System Company, Ltd.
Engineering Plastics, Ltd.
Eye Lighting Systems Corporation
GEM Polymers Ltd.
General Electric (U.S.A.) Industrial Automation, Ltd.
Information Services International - Dentsu, Ltd.
Japan Nuclear Fuel Company, Limited

Toshiba Electronic Systems Co. Ltd.
Toshiba Silicone Company, Ltd.
Yokogawa Medical Systems, Ltd.
Samsung Medical Systems
Brelec, S.A. de C.V.
Diesel Industrial y Tractiva S.A. de C.V.
Generacion Electrica Nacional S.A. de C.V.
Medidores Electromecanicos, S.A. de C.V.
Ultrapol, S.A. de C.V.
Donald Brown & Co. Ltd.
IGE of Nigeria Ltd.
Sadelmi Nigeria Limited
A/S. Medirad
Philippine Electric Corporation
Jamjoom Electrical Distribution Assemblies Company Ltd.
Svenska Medirad A.B.
Taian Electrical Manufacturing Company
United Asia Electric Company
CBI Nuclear Company
CFM International, Inc.
Cool Water Coal Gasification Program
Coherent General, Inc.
High Voltage Breakers, Inc.
Hydraulic Turbines, Inc.
Industrial Networking, Inc.
Locke Insulators, Inc.
Otisca Industries, Limited

Ringwood Avenue Joint Venture Assoc.
General Electric de Uruguay S.A.
Venezolana de Compresores y Motores S.A.
Asahi Diamond Industrial Company, Limited
Shinano Tokki, K.K.
Toshiba Corporation
General Electric (Kenya) Ltd.
Marquette Electronics, Inc.
Solomon Design Automation Systems
Star Technologies, Inc.
Vicom Systems, Inc.

AFFILIATES:

General Electric - Goninan Limited
General Electric-Ricard Limited
Sade Sul Americana de Engenharia S.A.
CAMCO, Inc.
Canadian General Electric Company Limited
Constructors-Sadelmi International Ltd.
Condisa S.A. Ingenieros Contratistas
Sud Americana de Electrificacion S.A.
W.Q.S. France S.A.R.L.
Quarzglas G.m.b.H.
Westdeutsche Quarzschmelze G.m.b.H.
Intersil India Limited
Intersil Singapore (Pte.) Limited

Watt & Akkermans Pte. Ltd.
Sociedad Anonima de Ingerieros Contratistas
Bates Turner, Inc.
Sud Americana de Electrificacion S.A.
Bunbury Rewinds Pty. Ltd.
F. R. Tulk & Co. Pty. Limited (In liquidation)
Goldfields Rewinds Pty. Limited
Niart International, Inc.
Valmet-Dominion, Inc.
Consorcio Distral-SADE Ltda. (In liquidation)
EASY, S.A. de C.V.
Enseres Electrodomesticos, S.A. de C.V.
Enseres Electroindustriales, SS. de C.V.
ISLO, S.A. de C.V.
POWER ELECTRICA, S.A. de C.V.
TRAGESA, S.A. de C.V.
Kvaerner-Calma A/S
Philippine Appliance Corporation
Philippine Glass Bulbs, Inc.
Pinagkaisa Realty Corporation
Philacor Realty and Development Corporation
Saudi American General Electric Company Limited
TUSAS Motor Sanayii A.S.
Reinsurance Systems Limited
A.P. - GERECCO Ltd.
Airport Tech Center Associates

American Oil and Gas Corporation
Amwest Associates
Arvada-Fremont Developers
Atrium V Joint Venture
BMW Credit Corporation
Baconsfield Associates
Bayou Cogeneration Plant
Bayou Partners Limited
Brandemere Associates
Cardinal Cogen
Center Stage I Associates
CFC/GECC (New York) Associates I
CFC/GECC (New York) Associates II
Diamond Oaks Associates
Ebbert's Homes VI
Ebbert's Homes VII
Equipment Financing Associates
Executive Center West Associates
FGIC Corporation
Financo Investors Fund L.P.
Financo Investors Management Partnership L.P.
Gleneagle Associates
Guinness Peat Aviatim
Huntington Glen Associates
Kirby Fletcher Stamford, Ltd.
Kramer Capital Corporation
Lonestar Florida Holding, Inc.
Marquette Center Associates I
Millicent Way Associates
Mira Mesa R&D Associates
Northchase One Associates

Northchase Two Associates
Northern Oaks Associates
Northern Telecom/General Electric Credit Associates
Ozona Development Drilling Partnership I
Ozona Development Drilling Partnership II
Ozona Development Drilling Partnership III
Park Place Developers, Ltd.
Pathfinder Mines Corporation
Patrick Petroleum Corporation Drilling Program No. 1
Patrick Petroleum Corporation South Louisiana Five Well Investment Package
Pear Tree Joint Venture
Pellicano Business Center Associates
Pierremont Phase II Associates
Plum Tree Dallas Associates, Ltd.
Powers Pointe Associates
Regency Park
Renner Plaza Associates
Racom Corporation
Rolling Hills Ranch
Structural Dynamics Research Corporation
SGE (New York) Associates I
SGE (New York) Associates II
Summit Oakes Associates
Timberglen Associates
VHD Electronics, Inc.
Vandenberg Country Club

Wainoco Appalachian Stamford, Ltd.
Watkins Equity Leasing
Wiles Associates
Woodlands Corporate Ctr. II
Manufacturera de Aparatos Domesticos S.A.
Turbinas y Mecanica C.A.
Vidriolux, C.A.
SADE Sociedad Anonima Constructora, Commercial, Industrial, Financiera, Inmobiliaria y de Mandatos
Jones and Rickard (Pty.) Limited
Banco Brasileiro de Investimentos Ipiranga S.A. (In liquidation)
UMON-Engenharia de Montagem Ltda.
Canadian Nuclear Equipment Suppliers Limited
TUSAS Aerospace Sanayii A.S.
Industrias Electronicas S.A.
Sociedad Financiera Credival C.A.
APA Ventures II Limited
Anadigics, Inc.
Analogic Corporation
Applied ImmuneSciences, Inc.
Applied Information Memories
Applied Materials, Inc.
Arlington Cable Partners
Avanti Communications Corp.
Axiom Computers, Inc.
Biological Energy Corp.
Brooke & Mack, Inc.

CGX Corp.
Cadre Technologies, Inc.
Canaan Computer Corp.
Commterm, Inc.
Computer Aided Design Group, Inc.
Computer Thought Corp.
Corporate Traffic Management, Inc.
Crop Genetics International N.V.
Crosspoint Venture Partners II
EnMasse Computer Corp.
Fairfield Venture Capital Fund L.P.
Galileo Electro-Optics Corp.
Gigabit Logic, Inc.
Health Stop Medical Management, Inc.
Hercules Limited Partnership Interest
Hercules Offshore Drilling Co.
I-Scan Corp
Ibis Systems, Inc.
Kleiner, Perkins, Caufield & Byers II
Kleiner, Perkins, Caufield & Byers II Annex
Koala Technologies Corp.
Kurta Corp.
Laserpath Corp.
Masstor Systems Corp.
Medical and Scientific Designs, Inc.
Megatape Corp.
Mobile Satellite Communications Corp.

Morris Decision Systems, Inc.
Multiflow Computer, Inc.
Nellcor, Inc.
Netra Corp.
Octel Communications Corp.
Omni-Flow, Inc.
Perceptron, Inc.
Prime Capital L.P.
Raster Technologies, Inc.
Saber Technology Corp.
Scientific Computer Systems, Inc.
SEEQ Technologies, Inc.
Silicon Compilers, Inc.
Stratus Computer, Inc.
Sydis, Inc.
Symbolics, Inc.
TeleSoft, Inc.
UTI Instruments Co.
Vitalink Communications Corp.
Ztel, Inc.
Burndy Corp.
Hughes Tool Co.
Cedar Creek Associates

APPELLANT: G. Heileman Brewing Company, Inc.

PARENTS: G. Heileman Brewing Company, Inc. stock is publicly traded on the New York Stock Exchange. The only entity owning 5% or more of Appellant is Batterymach Financial Management.

G. Heileman Brewing Company, Inc. has no subsidiaries or affiliates.

APPELLANT: Heath Techna Aerospace Co., a division of Criton Technologies

PARENTS:
Criton Technologies, a New York partnership
Criton Corporation
Royal Zenith Inc.
Dyson Kissner Moran
B.S.D. Diversified
The Bowery Savings Bank

Heath Techna Aerospace Co. has no subsidiaries or affiliates.

APPELLANT: Honeywell Inc.

PARENTS: Honeywell Inc. stock is publicly traded on the New York Stock Exchange. No corporation owns 5% or more of Appellant.

SUBSIDIARIES:
Votan
Honeywell - Ericsson Development Company
Honeywell - Sharecom Houston
Honeywell AG
Honeywell Turki - Arabia LTD.
Goldstar - Honeywell Company, LTD.
NEC Honeywell Space Systems
Honeywell B.V.

AFFILIATES:
Magnetic Peripherals Inc.
Societe De Promotion Commerciale Bull S.A.R.L.

Peripheral Components Inc.
Optical Peripherals Lab
Data Management S.p.A.
RSO Futura S.r.l.
Societa Iniziative Commerciali Industriali Techniche S.p.A. Sicit
Sviluppo Informatica Sistemi Aziendali S.p.A. Sisa
Societa Italiana Servizi Technici Ed Organizzativi S.p.A. Sisto
Hong Leong Honeywell Sdn. Bhd.
Honeywell Sistemas Informacion, S.A. DE C.V.
Mexicanna Industrial Honeywell, S.A. DE C.V.
IPC-ISSC-Automation G.m.b.H. and Co., KG
Compagnie CII-HB Internationale N.V.
Honeywell Bull, S.A. (Belgium)
ABC-BULL Telemacatic S.A.
CII Honeywell Bull Systems N.V.
Honeywell Bull A.G.
Sociedade Portuguesa Honeywell Bull, LDA.
Honeywell Bull, S.A. (Spain)
Datasystem, S.A.
Honeywell Do Brasil & Cia.
Saudi Arabian Tetra Tech Limited
CDA - Weeks, A joint venture
Pyromeca S.A.

Cometa S.A.
Honeywell ET Compagnie
Honeywell Europe S.A.
Holding K.G.
Honeywell India Limited
Yamatake - Honeywell Co.,
LTD.
Taishin Co., LTD.
Yamatake Engineering Service
Co., Ltd.
IPC Espana, S.A.
Yamatake and Co., Ltd.
Honevwell Kuwait K.S.C.
Dienes - Honeywell G.m.b.H.
FEG Gesellschaft Fur Logistik
Arbeitsmedizinische
Betreuungsgesellschaft
Kieler Betriebe G.m.b.H.
Centra - Buerkle G.m.b.H.
Bull S.A.
CII Honeywell Bull Congo
OY Honeywell Bull AB
Bull CP8
CII Honeywell Bull Afrique,
S.A.
CII Honeywell Bull
Cameroun S.A.R.L.
CII Honeywell Bull Gabon
S.A.R.L.
CII Honeywell Bull Cote
D'Ivoire S.A.
CII Honeywell Bull Niger
S.A.R.L.
CII Honeywell Bull Senegal
S.A.R.L.
Compagnie Francaise D'In-
vestissments Prives
(COFIP)

Societe Internationale Pour L'Innovation
CII Honeywell Bull Systemes
Bull Peripherals G.m.b.H.
Honeywell Bull S.A.L.
Honeywell Bull, Madagascar
Honeywell Bull Maroc S.A.
Micro Card Technologies Inc.

APPELLANT: International Paper Company

PARENTS: International Paper Company stock is publicly traded on the New York Stock Exchange. No corporation owns 5% or more of Appellant.

SUBSIDIARIES: Arizona Chemcial Company
International Paper Capital Formation, Inc.
Societe Mediterraneenne, D' Emballages
Corporacion Forestal De Venezuela, C.A.
Envases Internacional, S.A.
Forest Insurance Limited
International Paper Korea Ltd.
IPI Corporation
Paper Industries Corporation of the Philippines
Productora De Papeces, S.A.
Rouviere Company
Sicilcartone, S.r.L.

AFFILIATES: None

APPELLANT: Jacqueline Cochran, Inc.

PARENTS: American Cyanamid Company

Jacqueline Cochran, Inc. has no subsidiaries or affiliates.

APPELLANT: Kalama Chemical, Inc.

PARENTS: Kalama Chemical,Inc. is a privately held corporation. The only corporations owning any stock in Kalama are:

The Dow Chemical Company, Norwest Growth Fund, Inc., and Shriner's Hospital.

Other than their passive ownership interests, none of these corporations are affiliated with Kalama.

SUBSIDIARIES: Kalama Foreign Sales Corporation
Kalama International, Ltd.

AFFILIATES: Seville Trading Co. Ltd.
Kalama International, a joint venture

APPELLANT: Kal Kan Foods, Inc.

PARENT: Mars, Incorporated

Kal Kan Foods, Inc. has no subsidiaries or affiliates.

APPELLANT: Kenai Salmon Packing Co.

PARENT:	North Pacific Processors, Inc. owned by Marubeni Corporation, a Japanese corporation (Marubeni-Japan)
SUBSIDIARIES:	None
AFFILIATES:	Alaska Pacific Seafoods
APPELLANT:	Korry Electronics Co., a division of Criton Technologies
PARENTS:	Criton Technologies, a New York partnership Criton Corporation Royal Zenith Inc. Dyson Kissner Moran B.S.D. Diversified The Bowery Savings Bank

Criton Technologies has no subsidiaries or affiliates.

APPELLANT:	Lone Star Industries, Inc.
PARENTS:	Lone Star Industries, Inc. stock is traded on the New York Stock Exchange.
SUBSIDIARIES:	Arm-Star Venture Associates Compania Nacional de Cemento Portland Dixon-Marquette Cement, Inc. General Hydrocarbons Polymer Concrete Inc. Lone Star - Falcon Lone Star-KC Concrete Tie Company

Lone Star Prestress Concrete, Inc.
Northwest Aggregates Co.
Pacific Coast Cement Corporation
Polycon Research, Inc.
Polymer Concrete Research, Inc.
Pyrament N.V.
Quazite Corporation

AFFILIATES:

Angaston Holdings Ltd.
Campania de Cimento Salvador S.A.
Canteras de Riachuelo S.A.
Cemento San Martin S.A.
Hawaiian Cement
Hawaii Pier 32 Holding Corporation
Lonestar Florida Cement, Inc.
Lonestar Florida Holding, Inc.
Lone Star Hawaii, Inc.
Lone Star Hawaii Cement Corporation
Lone Star Hawaii Rock Products, Inc.
Lone Star Hawaii Services, Inc.
Plastibeton Canada Inc.
Plastibeton Inc.
Riachuelo S.A.
Stresscon, partnership
San-Vel Santa Fe J/V
CACP Cementus S.A.
Lone Star Hawaii Construction, Inc.
Lone Star Hawaii Properties, Inc.
Cimento Maua S.A.

Marcomin Participacoes Ltda.
Qualimat Distribuidoes de Materiais de Construcao S.A.
Minsisiso Campeao Ltda.
Campeao Participacoes Ltda.
Maporte Transportadoes Ltda.
Cimentos Aluminosos Cialmig - Lafarge Ltda.

APPELLANT: Longview Fibre Company

Longview Fibre Company is a privately held corporation. No corporation owns 5% or more of Appellant's stock and Appellant has no subsidiaries or affiliates.

APPELLANT: Mars, Inc.

Mars, Inc. is a privately held corporation, and Appellant has no subsidiaries or affiliates.

APPELLANT: E. M. Matson, Jr., Co.

E. M. Matson, Jr., Co. is a sole proprietorship. Appellant has no subsidiaries or affiliates.

APPELLANT: Mattel, Inc.

PARENTS: Stock of Mattel, Inc. is publicly traded on the New York Stock Exchange. Corporations owning 5% or more of Appellant are:

Warburg, Pincus Capital Partners, L.P.

E.M. Warburg Pincus & Co., Inc.
RJR, Ltd.
WDR, Ltd.
Camont Investments, Inc.

SUBSIDIARIES: Mattel Limited (Taiwan)
Mattel Molds, Ltd. (Taiwan)

AFFILIATES: None

APPELLANT: Miller Brewing Company

PARENTS: Philip Morris Companies, Inc.
Philip Morris Inc.

Miller Brewing Company has no subsidiaries or affiliates.

APPELLANT: Murray Pacific Corporation

PARENTS: Murray Pacific Corporation is a privately held corporation. No corporation owns 5% or more of Appellant and Appellant has no subsidiaries or affiliates.

APPELLANT: National Can Corporation

PARENTS: Triangle Industries, Inc.

SUBSIDIARIES: None

AFFILIATES: Central Jersey Industries
Avery, Inc.
Nippon National Seikon Co.
National Can Italiana, S.p.A.
Nacanco SUD S.p.A.
National Can Iberica, S.A.

APPELLANT:	The Noel Corporation d/b/a Noel Canning Corporation
PARENTS:	Noel Canning Corporation is a privately held corporation. No corporation owns 5% or more of Appellant's stock, and Appellant has no subsidiaries or affiliates.
APPELLANT:	North Pacific Processors, Inc.
PARENT:	Marubeni Corporation, a Japanese corporation (Marubeni-Japan)
SUBSIDIARIES:	Alaska Pacific Seafoods, Inc. Kenai Salmon Packing Co.
AFFILIATES:	None
APPELLANT:	Peter Pan Seafoods, Inc.
PARENT:	Nichiro Gyogyo Kaisha, Ltd.
SUBSIDIARIES:	Peninsula Salmon, Inc. Peter Pan Communications, Inc. SeaBlends Food Company, Inc. Seven Seas Fishing Company, Inc. Astoria Warehousing, Inc.
AFFILIATES:	Nichiro Pacific, Ltd.
APPELLANT:	Olympia Brewing Company

PARENTS:	Pabst Brewing Company is successor in interest as of 12/31/83. Pabst is owned by S&P Company.
SUBSIDIARIES:	None
AFFILIATES:	Falstaff Corporation General Brewing Company
APPELLANT:	Pabst Brewing Company
PARENT:	S&P Company (aka Keller Street Development Co.)
SUBSIDIARIES:	None
AFFILIATES:	Falstaff Corporation General Brewing Company
APPELLANT:	Paragon Electric Co., Inc.
PARENTS:	Paragon Electric Co., Inc. is a privately held corporation. No corporation owns 5% or more of Appellant. Paragon has no subsidiaries or affiliates.
APPELLANT:	Quinton Instrument Company
PARENT:	A.H. Robins Company, Incorporated
SUBSIDIARIES:	None
AFFILIATES:	Lee Laboratories, Inc. Eurand Italia A.P.A. Eurand International S.r.L. Eurand Microencapsulation, S.A.

Pharia Industrial Company
A.H. Robins Farmaceutica, S.A.
Parfums Caron, S.A.
Plastique et Parfume, S.A.
A.H. Robins Showa Co., Ltd.

APPELLANT: R.A. Hanson Company, Inc.

R.A. Hanson Company, Inc. is a privately held corporation. No corporation owns 5% or more of Appellant. R.A. Hanson Company has no subsidiaries or affiliates.

APPELLANT: RAHCO, Inc.

PARENT: R.A. Hanson Company, Inc.

RAHCO, Inc. has no subsidiaries or affiliates.

APPELLANT: Rainier Brewing Co.

PARENT: G. Heileman Brewing Company, Inc.

Rainier Brewing Co. has no subsidiaries or affiliates. Appellant merged into parent 12/31/83.

APPELLANT: Reynolds Metals Company

PARENTS: Reynolds Metals Company stock is publicly traded on the New York Stock Exchange. The only corporations owning 5% or more of Appellant are:

Templeton, Galbreath & Hamburger, Ltd.

Windsor Fund Series/
Windsor Fund
Wellington Management
Co./Thorndyke, Doran,
Pain & Lewis

SUBSIDIARIES:

Alpart Farms (Jamaica), Ltd.
Alpart Jamaica, Inc.
Alternwerder Hutten-Und
Walzwerk G.m.b.H.
Eskimo Pie Corporation
Halco (Mining), Inc.
Robertshaw Controls
Company
Volta Aluminium Company
Limited

AFFILIATES:

Aluminio Del Caroni, S.A.
Aluminio Reynolds Del Peru
Sociedad Anonima
Aluminio Reynolds, S.A.
Aluminio Reynolds, Santo
Domingo, S.A.
Aluminium-Oxid-
Gemeinschaft Stade
Aluminium Oxid Stade
G.m.b.H.
Aluminum Corporation of
the Philippines
Bevco Containers
Bushnell Plaza Development
Corporation
City Venture Corporation
Compania Metallurgica
Colombiana, S.A.
Compagnie Des Bauxites De
Guinee
Egyptian Aluminium Products
Company

Eskimo Europ, S.a.r.l.
Hamburger Aluminium-Werk G.m.b.H.
Industria Navarra Del Aluminio, S.A.
Industrias Lacteas Del Yocomia, S.A.
Industrias Metal Mecanicas Del Quindio, S.A.
Iranian Aluminum Co.
Jamaica Alumina Security Company, Ltd.
Lynx-Canada Explorations Limited
Manicouagan Power Company
Minas Do Dragao Ltda.
Mineraco Rio Do Norte S.A.
Mineraco Sao Jorge Ltda.
Mineradora De Bauxita Ltda.
Minerais De Aluminio Ltda.
New Eastwick Corporation
Phillips-C.B.A. Conductors Limited
Presidential Development Corporation
Presidential Plaza Corporation
Puerto De Hierro, Sociedad Anonima
Reynolds Aluminio, Sociedad Anonima
Reynolds Aluminum Company of Canada, Ltd.
Reynolds Philippine Corporation
Reywest Development Corporation
S.L.I.M. - Societa Lavorazioni Industriali Metalli S.p.A.

Superenvases Envalic, C.A.
Umco, S.A.
Union Industrial y Astilleros Barranquilla "Unial" S.A.
Valesul Aluminio S.A.
Weybosset Hill Development Corporation
Worsley Alumina Pty., Ltd.
Alternative Housing Associates
Alumina Partners of Jamaica
Aluminium-Oxid-Gemeinschaft Stade
Bennett Manor Associates
Bevco Containers
Burrstone Associates
Capitol Hill Associates, Ltd.
Cathedral Square Associates
Cathedral Square Associates, II
Chasco Woods Associates, Ltd.
Curtis Apartments Associates
Cypress Courts Associates, Ltd.
Cypress Cove Associates, Ltd.
Drew Gardens Associates, Ltd.
Jamaica Reynolds Bauxite Partners
Jefferson Village Associates
Midtown Associates
Mill Pond Towers Associates
The National Housing Partnership
Oceanside Estates Associates, Ltd.
One Empire Plaza Associates

Rayburn Manor Associates
Regency West Associates
Reynolds Gilbane Realty Associates
Reynolds Metals Company & Associate, L.P.
Reywest Development Company
Southeast Vinyl Company
Titusville Manor Associates
Windermere Associates, Ltd.
Eastwick Joint Venture
Eastwick Joint Venture I
Eastwick Joint Venture IV
Mount Gibson Joint Venture
Regency Joint Venture
The Reynolds-Gilbane-Weybosset Joint Venture
Worsley Joint Venture

APPELLANT: Scott Paper Company

PARENTS: None

SUBSIDIARIES: None

AFFILIATES:
Gureola - Scott, S.A.
Taiwan Scott Paper Corporation
Celulosa Jujuy, S.A.
The Bowater - Scott Corporation of Australia, Ltd.
Companhia de Papisis
Scott Paper Limited
Papeles Scott de Columbia, S.A.
Scott Paper Company de Costa Rica

Sanyo Scott Company, Limited
Ssangyong Paper Co., Ltd.
Compania Industrial de Son Cristobal
Scott Trading Limited
Thai-Scott Paper Company Limited
Bowater-Scott Corporation Limited
Brunswick Pulp & Paper Company
Brunswick Pulp Land Company
Cansco Chemicals Limited
Mountain Tree Farm Company

APPELLANT: Shulton, Inc.

PARENTS: American Cyanamid Company

Shulton, Inc. has no subsidiaries or affiliates.

APPELLANT: Spacelabs, Inc.

PARENT: Squibb Corporation

SUBSIDIARIES: None

AFFILIATES: Bach Mueller Company
California Public Screening Inc.
Charles of the Ritz S.A.
International Biomedics, Inc.
Manufactureros Quimicos Farmaceuticos S.A.

	Ohmaco S.A. Sino American Shanghai Standard Pharmaceuticals Ltd. Squibb Nova Ltd. Squibb Connaught Squibb Industria Quimica, S.A. Squibb Pakistan Ltd. Squibb (Nigeria) Ltd. Squibb of Bangladesh Ltd. Symbotics Ltd. Von Heyden Gesellschaft Mit Beschrankter Haftung
APPELLANT:	Square D Company
PARENT:	Square D Company stock is publicly traded on the New York Stock Exchange. Only one entity owns more than 5% of Appellant: Delaware Management Company, Inc.
SUBSIDIARIES:	Palatine Hills Leasing, Inc. Square D Andina, S.A. Square D (Saudi Arabia) Limited
AFFILIATES:	Furukawa Circuit Foil Co., LTD Square D France, S.A. Square D Company Australia PTY, Limited Square D Italia S.p.A. Daito Topaz

APPELLANT:	Thomasville Furniture Industries, Inc.
PARENT:	Armstrong World Industries, Inc.
SUBSIDIARIES:	None
AFFILIATES:	Inarco Limited Armstrong Cork (Ireland) Limited Armstrong World Industries, G.m.b.H. Armstrong Cork Espana, S.A. Armstrong World Industries Pty. Ltd.
APPELLANT:	Trident Seafoods Corporation
PARENTS:	Trident Seafoods Corporation is a privately held corporation. No corporation owns 5% or more of Appellant.
SUBSIDIARY:	San Juan Seafoods, Inc.
AFFILIATE:	Windjammers, Inc.
APPELLANT:	Uncle Ben's, Inc.
PARENT:	Mars, Incorporated

Uncle Ben's, Inc. has no subsidiaries or affiliates.

APPELLANT:	U.S. Oil & Refining Co.
PARENT:	Time Oil Co.

SUBSIDIARY:	Diox Oil Inc.
AFFILIATES:	None
APPELLANT:	Welch Foods, Inc., a cooperative
PARENT:	National Grape Cooperative Association, Inc.
SUBSIDIARIES:	The Springfield Bank for Cooperatives Cooperating Brands, Inc.
AFFILIATES:	None
APPELLANT:	Western Steel Casting Company

Western Steel Casting Company is a privately held company. Appellant has no subsidiaries or affiliates.

APPELLANT:	Westinghouse Electric Corporation
PARENTS:	Westinghouse Electric Corporation stock is traded on the New York Stock Exchange. No corporation owns 5% or more of Appellant.
SUBSIDIARIES:	Electric Office Centers of America Innovative Technologies, Inc. KRW Energy Systems, Inc. Mictron, Inc. Powerex, Inc. Sentec Corporation

Siliconix, Inc.
Speech Plus
Theta J Corporation
Toshiba-Westinghouse Electronics Corporation
Turbine Metal Technologies, Inc.
United Western Technologies
VLSI Technology
WM Power Products, Inc.
Compagnie des Dispositifs Semiconducteurs Westinghouse
Eletromar Industria Eletrica Brasileira, S.A.
Enwesa Servicios S.A.
Tyree Industries Limited
Vektron, S.A.
Westinghouse Canada Inc.
Westinghouse, S.A.
WEXICO Systems and Services, Ltd.

AFFILIATES:

Boo Instrument AB
CDSW Ireland Limited
CEMAC Westinghouse PTY Limited
Condumex
Consu-IEM, S.A. de C.V.
Contradores Electricos, C.A.
Division Comercial IEM, S.A. de C.V.
Electro- Fanal S.A.
Eletromar Nordeste, S.A.
Electrotableros, S.A. de C.V.
E-Mail Westinghouse PTY Ltd.
Empresas IEM, S.A. de C.V.

APPELLANT:	W.R. Grace & Co.
PARENTS:	W.R. Grace & Co. stock is publicly traded on the New York Stock Exchange. No corporation owns 5% or more of Appellant.
SUBSIDIARIES:	AWI Business Data Services, Inc. Carbon Dioxide Slurry Systems L.P. CFF Beverage Company Del Taco Corporation Duke Transportation Inc. El Torito Restaurants, Inc. EMAbond Inc. E.T. Beverage Company, Inc. GHL Management, Inc. Grace Ventures Partnership One Herman's Sporting Goods, Inc. J.T. Beverage Inc. The L.C.S. Beverage Company, Inc. Monolith Enterprises, Incorporated Mountain View Insurance Company S&H Beverage Co., Inc. Soft Kat, Inc. Taco Villa, Inc. T&D Beverage, Inc. TAG Pharmaceuticals, Inc. Producta de Papeles S.A. Feldmuehle - Grace Noxeram G.m.b.H.

Darex Kabushiki Kaisha
Fuji - Davison Chemical Ltd.
Nippon Belt Kogyo K.K.
Teroson K.K.
Homco Trinidad Ltd.
Trinidad Nitrogen Co., Limited
Bartow Chemical Products

AFFILIATES:

Agracetus
Axial Basin Ranch Company
Beckett Partners
Bison Nitrogen Products Co.
Colowyo Coal Company
Four Corners Mine
Ft. Meade Chemical Products
Grace - Feldmuehle Motor Ceramics Company
Hayden Gulch West Coal Company
H-G Coal Company
Hughes Drilling Fluids
Marine Culture Enterprises
Oklahoma Nitrogen Co.
Paramont Coal Company
Pursue Gas Processing and Petrochemical Company
The Fono Ice Cream Company
Equipos IEM, S.A. de C.V.
Friem, S.A. de C.V.
Funktionelle Musik G.m.b.H.
Futu-IEM, S.A. de C.V.
Galileo La Rioja, S.A.
Galileo Uruguaya, S.A.
Hyundai Elevator
IEM S.A.
Industrias Electronicas, S.A.

Industria IEM, S.A. de C.V.
Industry Services Company of Saudi Arabia, Ltd.
Korea Industry Services Company, Ltd.
Maihak A.G. (H.)
Mex-Control, S.A. de C.V.
Mitsubishi Nuclear Fuel Co., Ltd.
Mitsubishi-Westinghouse Electric SGC, Ltd.
Reftrans, S.A.
Servicos Corporativos, IEM, S.C.
Silectra, S.A. de C.V.
Transformadores de Distribucion, S.A.
Transformadores TPL S.A.
Tyree-Power Construction Limited
Wescan Europe Ltd.
Westinghouse Asia Controls Corp.
Westinghouse Electric Supply Co. of Saudi Arabia
Westinghouse Electro Metalurgicas, C.A.
Westinghouse Projectos Electricos, S.A.
Westinghouse Saudi Arabia, Ltd.
Westralian Transformers PTY Limited
Avatar Technologies Control
Bridgeport Community Antenna TV Co.
Cable TV General, Inc.
CATV Enterprises, Inc.

American Health Capital
HIBI Management, Inc.
Cordell Chemicals, Inc.
El Paso Cablevision, Inc.
Focus Cable of Oakland, Inc.
Grosse Point Cable, Inc.
Group W Cable of Columbia
Heights/Hilltop, Inc.
Group W Cable of Lorain
County, Inc.
Group W Cable of North
Central Chicago, Inc.
Group W of Northwest
Chicago, Inc.
Group W Cable of St.
Bernard, Inc.
Horizon International
Television, Inc.
Integrated Communications
Systems
Kaiser-Teleprompter of
Hawaii, Inc.
New Trends, Inc.
Northern Tier Pipeline
O'Connor Combustor
Corporation
Perceptics
Piedmont Cablevision, Inc.
Porta Pak Corporation
Saw Mill River Cablevision,
Inc.
Sifco Turbine Component
Services
Southwest Video Corporation
Sutro Towers, Inc.
Telecom Cablevision, Inc.
Television Tower, Inc.
Valid Logic Systems, Inc.

APPELLANT:	Xerox Corporation
PARENTS:	Xerox Corporation stock is publicly traded on the New York Stock Exchange. No corporation owns 5% or more of Appellant.
SUBSIDIARIES:	Xerox Canada Inc. Xerox do Brasil S.A. Xerox del Peru, S.A. Xerox de Venezuela, C.A. Xerox de Colombia S.A. Rank Xerox Investments Limited Rank Xerox Limited Rank Xerox Holding B.V.
AFFILIATES:	Societe Industrielle Rank Xerox S.A. Fuji Xerox Co., Ltd. Rank Xerox (Australia) Pty. Limited Rank Xerox Greece S.A. International Marine Under—writers of New England, Inc. LWB Syndicate Inc. CALPAC Holding Company, Inc. Claremont Holdings Limited Commonwealth County Mutual Insurance Company Commonwealth Lloyd's Insurance Company Financial Guaranty Associates, Inc. Dimensional Corporate Finance, Inc.

Appendix H

[Filed May 1, 1985]

KALAMA CHEMICAL, INC.,
STIPULATION OF FACTS

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
FOR THURSTON COUNTY

KALAMA CHEMICAL, INC.,
Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01891-4

STIPULATION OF FACTS

The parties jointly stipulate that to the best of their knowledge and belief the following facts are true and correct:

1. Kalama Chemical, Inc. ("Kalama" or "the company"), is a Washington corporation, having its corporate office in Seattle, Washington.

2. Kalama manufactures and sells chemical products. Its products are sold primarily outside the State of Washington and in the export market.

3. Kalama operates manufacturing facilities in Kalama, Washington, and Garfield, New Jersey. Kalama maintains stocks of its goods (including those it manufactures in Washington) in Illinois, California, New Jersey, Indiana, New York, and Texas (as well as Washington). The original cost of Kalama's property in Washington is $23,762,321. The original cost of its property everywhere (including Washington) is $30,039,160. (Both costs are as of Kalama's fiscal year ended June 30, 1984, and include leased property, based on eight times the net annual rental rate.)

4. In order to sell Washington-manufactured products outside Washington, Kalama employs sales representatives and others whose activities outside Washington contribute to

the value of the products that are manufactured in Washington and sold outside this state. The cost of their activities is included in the price Kalama received for those products.

5. Kalama employs a total of approximately 175 people. Approximately 95 of them are employed in Washington and 80 are employed in other states. The company's Washington payroll was $3,297,524 for its fiscal year ended June 30, 1984. Its total payroll everywhere was $6,635,515 for the same period.

6. Kalama's employees in Washington include management/administrative personnel, plant workers, engineers, office personnel, and others whose activities in Washington contribute to the value of the products that are manufactured in this state. The cost of their activities is included in the price Kalama receives for those products.

7. As reported on its returns filed with the Washington State Department of Revenue for business and occupation tax purposes, Kalama's annual out-of-state sales of products manufactured in Washington ranged from $23,981,057 to $29,693,132 during the period January 1, 1980, through December 31, 1984. Kalama paid manufacturing business and occupation taxes to Washington of $495,612.59 (including interest) during that period.

8. Kalama's total sales everywhere were $46,779,613 during its fiscal year ended June 30, 1984. Its sales in Washington were $2,580,766 during the same period.

9. Kalama pays taxes to other jurisdictions on income derived in those locations from the sale of products manufactured in Washington. Kalama pays income tax to the states of California, New Jersey, and Illinois ("the Market States") on the income Kalama derives from the sale in those states of products manufactured in Washington. The income taxed by the Market States is Kalama's gross receipts (i.e., its gross income of every kind and from every source, including its gross proceeds from goods manufactured in Washington and sold in the Market States), minus certain deductions permitted by statute, and multiplied by an apportionment factor. The taxes

imposed by the Market States are apportioned on the basis of a three-factor formula that compares Kalama's property, payroll, and sales in those states to its property, payroll, and sales everywhere. For goods Kalama manufactures in Washington and sells in one of the Market States, Kalama's gross proceeds from those goods are attributed to the Market State and are, therefore, included in the numerator of its "sales" or "receipts" factor. Kalama's gross proceeds from the same goods are also used by Washington as the measure of its manufacturing tax on Kalama.

10. Kalama pays franchise tax to the State of Texas. The basis of the franchise tax is the corporation's "taxable capital" allocated to Texas. The "taxable capital" of a corporation is its stated capital (*e.g.*, the par value of all shares issued having a par value) and its surplus. The "taxable capital" of a corporation is allocated to Texas through an apportionment formula. Under the formula "taxable capital" is multiplied by a fraction, the numerator of which is the corporation's gross receipts from business done in Texas and the denominator of which is gross receipts from its entire business. Gross receipts includes the gross proceeds from sales delivered in Texas, services performed in Texas and other business done in Texas. For goods Kalama manufactures in Washington and sells in Texas, Kalama's gross proceeds from those goods are attributed to Texas and are, therefore, included in the numerator of Texas' apportionment formula as receipts from business done in Texas. Washington uses those same gross proceeds as the measure of its manufacturing tax on Kalama.

11. Kalama borrowed and invested funds during the years 1980 through 1984 in the generally available money markets. Kalama's experience with respect to the cost of borrowing money and its return on invested money reflected the prevailing market rates of interest.

12. No claims for refund are made by Kalama in this action on behalf of any corporation that is or has been a subsidiary or affiliate of Kalama. This stipulation is not a waiver of any such claims and is without prejudice to any right any

past or present Kalama subsidiary or affiliated corporation may have to seek such relief in a separate action.

KENNETH O. EIKENBERRY
Attorney General
State of Washington

/s/ William B. Collins
William B. Collins
Assistant Attorney General
Attorneys for Defendant

BOGLE & GATES

/s/ D. Michael Young
D. Michael Young
Attorneys for Plaintiff

Appendix 1

NATIONAL CAN CORPORATION STIPULATION OF FACTS

[Filed May 17, 1985]

IN THE SUPERIOR COURT OF
THE STATE OF WASHINGTON
FOR THURSTON COUNTY

NATIONAL CAN CORPORATION,
Plaintiff,
v.

STATE OF WASHINGTON
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01900-7

STIPULATION OF FACTS

The parties jointly stipulate that to the best of their knowledge and belief the following facts are true and correct:

1. National Can Corporation ("NCC") is a Delaware corporation, having its principal office in Chicago, Illinois.

2. NCC manufactures and sells packaging products. NCC's products are sold throughout the world.

3. NCC operates manufacturing facilities in 22 states, including Washington. NCC maintains offices in 25 states, including Washington. Exhibit A, which lists NCC's offices and facilities throughout the United States, is incorporated by reference as a part of this stipulation. The original cost of NCC's property in Washington was approximately $31.9 million. The original cost of its property everywhere (including Washington) was $899 million. (Both costs are as of 1983 and include leased property, based on eight times the net annual rental rate.)

4. In order to sell NCC packaging products in Washington and elsewhere, NCC maintains plants, offices, warehouses and other facilities in states other than Washington, and employs many people outside the State of Washington, including factory workers, engineers, scientists, laboratory technicians, accountants, lawyers, office personnel,

warehouse personnel, industrial and public relations personnel, computer programmers, data processors, and other employees whose activities outside Washington contribute to the value of the products that are sold in Washington. The cost of their activities is included in the price NCC receives for those products.

5. In order to sell its products outside Washington, (including the products it manufactures in Washington), NCC maintains offices, warehouses, and other facilities in states other than Washington, and employs many people outside the State of Washington, including sales representatives, engineers, scientists, laboratory technicians, accountants, lawyers, office personnel, warehouse personnel, industrial and public relations personnel, computer programmers, data processors, and other employees whose activities outside Washington contribute to the value of the products that are manufactured in Washington and sold outside this state. The cost of their activities is included in the price NCC receives for those products.

6. NCC employs approximately 10,400 people worldwide. Approximately 240 of NCC's employees are in Washington. In 1983, NCC's Washington payroll was approximately $7.6 million. Its total payroll everywhere was approximately $238 million.

7. In order to sell NCC packaging products in Washington, NCC maintains a sales office and employs 7 sales and office personnel in Washington whose activities contribute to the value of products sold in this state. The cost of their activities is included in the price NCC receives for those products.

8. In order to manufacture NCC products in Washington, NCC maintains two plants and employs factory workers, engineers, office personnel and others in Washington whose activities contribute to the value of the products that are manufactured in Washington and sold outside this state. The cost of their activities is included in the price NCC receives for those products.

9. As reported on returns filed with the Washington State Department of Revenue for business and occupation tax

purposes, NCC's annual Washington sales of products manufactured outside Washington ranged from $19.9 million to $32 million during the period January 1, 1980, through December 31, 1984. NCC paid wholesaling taxes to Washington of $606,863.26 on such sales during that period.

10. As reported on returns filed with the Washington State Department of Revenue for business and occupation tax purposes, NCC's annual out-of-state sales of products manufactured in Washington ranged from $11.3 million to $18.7 million during the period January 1, 1980, through December 31, 1984. NCC paid manufacturing taxes to Washington of $372,843.78 during that period.

11. As reported on returns filed with the Washington State Department of Revenue for business and occupation tax purposes, NCC's gross receipts from goods both manufactured and sold in Washington ranged from $71.4 million to $78.5 million during the period January 1, 1980, through December 31, 1984. NCC paid wholesaling taxes to Washington of approximately $1,800,000 on such gross receipts during that period.

12. Between January 1, 1980 and December 31, 1984, NCC paid approximately $2,800,000 in Washington State business and occupation taxes. In this action, NCC is seeking a refund of approximately $980,000 plus reasonable interest.

13. NCC's 1983 total sales everywhere were approximately $1.552 billion. Its 1983 sales in Washington were approximately $110 million.

14. NCC pays taxes to other jurisdictions on income derived in those locations from the sale of products manufactured in Washington. NCC pays taxes to the states of Arizona, California, Georgia, Illinois, Minnesota, Oregon and Wisconsin ("the Market States") on the income NCC derives from the sale in those statesof [sic] products manufactured in Washington. The income taxed by the Market States is NCC's gross receipts (i.e., its gross income of every kind and from every source, including its gross proceeds from goods manufactured in Washington and sold in the Market States), minus certain deductions permitted by statute, and multiplied by an apportionment factor. The state income taxes imposed

by the Market States are apportioned on the basis of a three-factor formula that compares NCC's property, payroll, and sales in those states to its property, payroll, and sales everwhere. [sic] For goods NCC manufactures in Washington and sells in one of the Market States, NCC's gross proceeds from those goods are attributed to the Market State and are, therefore, included in the numerator of its "sales" or "receipts" factor. NCC's gross proceeds from the same goods are also used by Washington as the measure of its manufacturing tax on NCC.

15. NCC pays taxes to other jurisdictions on income derived from its sales of products in Washington. NCC pays taxes to the State of California on the income NCC derives from manufacturing goods in California and selling them in Washington. NCC's gross proceeds from the same goods are also used by Washington as the measure of its wholesaling tax on NCC. The income taxed by California is NCC's gross receipts (i.e., its gross income of every kind and from every source, including its gross proceeds from goods manufactured in that state and sold in Washington), minus certain deductions permitted by statute, and multiplied by an apportionment factor. California's tax is apportioned on the basis of a three-factor formula that compares NCC's property, payroll, and sales in California to its property, payroll, and sales everywhere. For goods NCC manufactures in California and sells in Washington, the property and payroll of NCC's plants that produce those goods and of its offices in the manufacturing state are included in the numerator of that state's property and payroll factors, respectively.

16. Washington is the only state in which NCC is subjected to a gross receipts tax measured by 100% of the gross receipts from the sale of products manufactured in and sold outside the taxing state.

17. Between 1980 and 1984, NCC manufactured some articles in Washington for its own use. The total value of products so manufactured does not exceed $10,000. NCC paid manufacturing B&O tax to Washington on that activity, and such tax is not included in the amount of the refund sought in this action.

18. NCC borrowed and invested funds during the years 1980 through 1984 in the generally available money markets. NCC's cost of borrowing money and its return on invested money were interest in the range of ½% to 2½% over the prevailing prime lending rate.

19. No claims for refunds are made by NCC in this action on behalf of any corporation that is or has been a subsidiary of [sic] affiliate of NCC. This stipulation is not a waiver of any such claims and is without prejudice to any right any past or present NCC subsidiary or affiliated corporation may have to seek such relief in a separate action.

KENNETH O. EIKENBERRY
Attorney General
State of Washington

/s/ William B. Collins
William B. Collins
Assistant Attorney General
Attorneys for Defendant

BOGLE & GATES

/s/ D. Michael Young
D. Michael Young
Attorneys for Plaintiff

STIPULATION OF FACTS
EXHIBIT A

NATIONAL CAN CORPORATION
SUMMARY OF REAL PROPERTY LOCATIONS IN THE U.S.

REVISED 03/21/84

ST	ZIP	COUNTY	CITY	STREET ADDRESS	DIVISION	FACILITY
AL	38215	_____	BIRMINGHAM	124 CARBON ROAD, P.O. BOX 94067	MCD	PLANT
AZ	85031	_____	PHOENIX	211 N. 51ST AVENUE	MCD	PLANT
CA	94010	_____	BURLINGAME	P.O. BOX 1699, 1657 ROLLINS ROAD	MCD	PLANT
CA	94010	_____	BURLINGAME	1657 ROLLINS ROAD	MCD	SALES
CA	94010	_____	BURLINGAME	1657 ROLLINS ROAD	CEQS	OFFICE
CA	90701	_____	CERRITOS	11544 SOUTH STREET, P.O. BOX 8000	MCD	SALES
CA	91744	_____	CITY OF INDUSTRY	437 NORTH BALDWIN PARK BOULEVARD	CLOSURE	PLANT
CA	90023	_____	LOS ANGELES	2615 SOUTH BONNIE BEACH PLACE	MCD	PLANT
CA	90023	_____	LOS ANGELES	4212 EAST 26TH STREET	MCD	PLANT
CA	90040	_____	MAYWOOD	4855 EAST 52ND PLACE	GLASS	PLANT
CA	95351	_____	MODESTO	430 DOHERTY AVENUE	MCD	PLANT
CA	94577	_____	SAN LEANDRO	2050 WILLIAMS STREET	MCD	PLANT
CT	06810	_____	DANBURY	GREAT PASTURE ROAD	MCD	PLANT
CT	06801	_____	DANBURY	OLD RIDGEBURY ROAD, P.O. BOX 160	PLATICS	SALES
CT	06801	_____	DANBURY	OLD RIDGEBURY ROAD, P.O. BOX 160	PLATICS	PLANT
FL	32205	_____	JACKSONVILLE	3331 WEST 12TH STREET	MCD	PLANT
GA	30345	_____	ATLANTA	1760 CENTURY CIRCLE	MCD	SALES

IL	60638	_____	BEDFORD PARK	7300 SOUTH NARRAGANSETT AVENUE	CLOSURE	PLANT
IL	60638	_____	BEDFORD PARK	7420 SOUTH MEADE AVENUE	PLATICS	PLANT
IL	60651	_____	CHICAGO	1031 NORTH CICERO AVENUE	CLOSURE	PLANT
IL	60609	_____	CHICAGO	1101 WEST 43RD STREET	MCD	PLANT
IL	60638	_____	CHICAGO	5620 WEST 51ST STREET	MCD	PLANT
IL	60638	_____	CHICAGO	5620 WEST 51ST STREET	MCD	SALES
IL	60631	_____	CHICAGO	8101 WEST HIGGINS ROAD	EXECUTIVE	HDQ
IL	60631	_____	CHICAGO	8101 WEST HIGGINS ROAD	MCD	SALES
IL	60631	_____	CHICAGO	8101 WEST HIGGINS ROAD	PLATICS	HDQ
IL	60016	_____	DES PLAINES	1000 EAST NORTHWEST HIGHWAY	MCD	PLANT
IL	60016	_____	DES PLAINES	1000 EAST NORTHWEST HIGHWAY	CENG	OFFICE
IL	60007	_____	ELK GROVE VILLAGE	2500 LIVELY BOULEVARD	MCD	PLANT
IL	60007	_____	ELK GROVE VILLAGE	2520 LIVELY BOULEVARD	MCD	ART
IL	60143	_____	ITASCA	751 NORTH HILLTOP AVENUE	PLATICS	PLANT
IL	60143	_____	ITASCA	750 NORTH HILLTOP AVENUE	PLATICS	SALES
IL	61111	_____	LOVES PARK	5800 INDUSTRIAL AVENUE	MCD	PLANT
IL	60521	_____	OAKSBROOK	1211 WEST 22ND STREET	MCD	SALES
IL	60068	_____	PARK RIDGE	400 WEST HIGGINS ROAD	GLASS	SALES
IL	61109	_____	ROCKFORD	627 GRABLE STREET	CEQS	PLANT
IN	47705	_____	EVANSVILLE	2201 WEST HARVLAND STREET	CLOSURE	PLANT
IN	46404	_____	OARY	NORTH BRIDGE STREET	MCD	WAREHOUSE
IN	46350	_____	LA PORTE	300 NORTH FAIL ROAD	MCD	PLANT
IN	46952	_____	MARION	P.O. BOX 249	GLASS	PLANT
IN	46952	_____	MARION	P.O. BOX 249, EAST CHARLES STREET	EXECUTIVE	HDQ
IN	46390	_____	WANATAH	US HIGHWAY 30	MCD	PLANT
MA	01757	_____	MILFORD	P.O. BOX 398, NATIONAL AVENUE	GLASS	PLANT
MA	02162	_____	NEWTON LOWER FALLS	2345 WASHINGTON STREET	MCD	SALES
MA	02162	_____	NEWTON LOWER FALLS	2345 WASHINGTON STREET	GLASS	SALES

MD	21207	_____	BALTIMORE	7133 RUTHERFORD ROAD	MCD	SALES
MD	21230	_____	BALTIMORE	2147 WICOHICO	GLASS	WAREHOUSE
MD	21093	_____	BALTIMORE	10 BERARD AVENUE	GLASS	SALES
MD	21219	_____	SPARROWS POINT	2010 RESERVOIR ROAD	MCD	PLANT
MD	21219	_____	SPARROWS POINT	2010 RESERVOIR ROAD	CEQS	OFFICE
MI	48084	_____	TROY	3221 WEST BIG BEAVER ROAD	GLASS	SALES
MN	55107	_____	ST. PAUL	139 EVA STREET	MCD	PLANT
MN	55107	_____	ST. PAUL	139 EVA STREET	CEQS	OFFICE
MN	55113	_____	ST. PAUL	1805 W. COUNTY ROAD C	MCD	PLANT
MN	55114	_____	ST. PAUL	2085 ELLIS AVENUE	PLATICS	PLANT
MN	55110	_____	WHITE BEAR LAKE	3564 ROLLING VIEW DRIVE	MCD	SALES
MO	63105	_____	CLAYTON	135 NORTH MERAMEC AVENUE	GLASS	SALES
MO	63105	_____	CLAYTON	222 SOUTH MERAMEC AVENUE	MCD	SALES
MO	63105	_____	CLAYTON	222 SOUTH MERAMEC AVENUE	CEQS	OFFICE
MO	63070	_____	PEVELY	P.O. BOX 615, HWY 61 & 67	GLASS	PLANT
MO	63132	_____	ST. LOUIS	10777 BAUR BOULEVARD	PLATICS	PLANT
MS	39567	_____	PASCAGOULA	3202 DENNY AVENUE	MCD	PLANT
NC	28209	_____	CHARLOTTE	1515 MOCKINGBIRD LANE	GLASS	SALES
NC	27893	_____	WILSON	P.O. BOX 1757, 2200 FIRESTONE PRKWY	GLASS	PLANT
NJ	07066	_____	CLARK	67 WALNUT AVENUE	CLOSURE	PLANT
NJ	07066	_____	CLARK	67 WALNUT AVENUE	MCD	SALES
NJ	08817	_____	EDISON	135 NATIONAL ROAD	MCD	PLANT
NJ	08332	_____	MILLVILLE	P.O. BOX 150 SOUTH 2ND ST.	GLASS	PLANT
NJ	08854	_____	PISCATAWAY	SOUTH RANDOLPHVILLE RD AT RT. 287	MCD	PLANT

NY	14618	_____	ROCHESTER	1467 MONROE AVENUE	GLASS	SALES
NY	10607	_____	WHITE PLAINES	297 KNOLLWOOD RD.	GLASS	SALES
OH	43502	_____	ARCHBOLD	R.R. #3, BOX 9B	MCD	PLANT
OH	45246	_____	CINCINNATI	#7 TRIANGLE PARK DRIVE	GLASS	SALES
OH	43227	_____	COLUMBUS	6100 CHANNINGWAY BLVD.	MCD	SALES
OH	43302	_____	MARION	1240 WEST CENTER STREET	MCD	PLANT
OH	43207	_____	OBETZ	2120 BUZICK DRIVE	MCD	PLANT
OH	44481	_____	WARREN	GRISWOLD STREET EXIT	MCD	PLANT
OK	73179	_____	OKLAHOMA CITY	3400 SOUTH COUNCIL ROAD	MCD	PLANT
OK	73107	_____	OKLAHOMA CITY	3810 NORTHWEST 3RD STREET	PLATICS	PLANT
PA	18051	_____	FOGELSVILLE	100 NATIONAL DRIVE	MCD	PLANT
PA	17331	_____	HANOVER	RD H3 BOX 22	MCD	PLANT
PA	16301	_____	OIL CITY (CLOSED)	P.O. BOX 334, ROUSEVILLE RD.	GLASS	PLANT
PA	15235	_____	PITTSBURGH	201 PENN CENTER BLVD., OFFICE 407	GLASS	SALES
PA	19462	_____	PLYMOUTH MEETING	661 WEST GERMANTOWN PIKE	GLASS	SALES
PA	19482	_____	VALLEY FORGE	P.O. BOX 964	MCD	SALES
SC	29010	_____	BISHOPVILLE	609 COUGAR STREET	MCD	PLANT
TN	38017	_____	COLLIERVILLE	110 SOUTH BYHALLIA ROAD	MCD	PLANT
TN	38119	_____	MEMPHIS	1255 LYNFIELD ROAD	MCD	SALES
TX	76011	_____	ARLINGTON	2205 EAST RANDOL HILL ROAD	MCD	SALES
TX	76140	_____	FORT WORTH	8800 SOUTH FREEWAY	MCD	PLANT
TX	77029	_____	HOUSTON	8501 EAST FREEWAY	MCD	PLANT
TX	77339	_____	KINGWOOD	2218 NORTH PARK, SUITE K	MCD	SALES
TX	75165	_____	WAXAHACHIE	P.O. BOX 677, I HWY 35-E AT HWY 287	GLASS	PLANT

WA	98031	_____	KENT	1220 NORTH SECOND AVENUE	MCD	PLANT
WA	98055	_____	RENTON	15 SOUTH GRADY WAY	MCD	SALES
WA	98660	_____	VANCOUVER	2601 N.W. LOWER RIVER ROAD	MCD	PLANT
WI	53105	_____	BURLINGTON	P.O. BOX 120, SOUTH McHENERY ST.	PLANT	SALES
WI	54306	_____	GREEN BAY	P.O. BOX 2386	MCD	PLANT
WI	53222	_____	WAUWATOSA	10721 WEST CAPITOL DRIVE	GLASS	SALES

Appendix J

XEROX CORPORATION STIPULATION OF FACTS

[Filed May 17, 1985]

IN THE SUPERIOR COURT OF WASHINGTON
FOR THURSTON COUNTY

XEROX CORPORATION,
Plaintiff,

v.

STATE OF WASHINGTON,
DEPARTMENT OF REVENUE,
Defendant.

NO. 84-2-01916-3

STIPULATION OF FACTS

The parties jointly stipulate that to the best of their knowledge and belief the following facts are true and correct:

1. Xerox Corporation ("Xerox") is a New York corporation, having its corporate office in Stamford, Connecticut.

2. Xerox manufactures and sells office equipment. Xerox products are sold throughout the world. None of this equipment is manufactured in Washington State.

3. Xerox operates manufacturing facilities in New York, California, and Texas. Xerox maintains offices in 48 states, including Washington.

4. Xerox operates regional distribution centers. Each distribution center handles specific and limited product lines. For example, Xerox duplicating equipment sold in Washington is distributed through the Santa Fe Springs, California, regional distribution center. Xerox typewriters and other nonduplicating office equipment sold in Washington are distributed through the Dallas, Texas, regional distribution center. Xerox office supplies sold in Washington are distributed through the Compton,

California, distribution center. Xerox does not operate a distribution center in Washington.

5. Xerox's administrative functions are performed in regional headquarters. For example, Xerox sales representatives selling in Washington are responsible to a regional sales office in Walnut Creek, California. Xerox's West Coast tax operations are headquartered in Santa Ana, California. The Santa Ana office has responsibility for tax planning in 17 western states, including Washington. Credit collection policy, advertising and marketing strategy, and salesmen compensation plans are developed and administered at Xerox's Rochester, New York, office. Central administrative functions are not performed in Washington.

6. The original cost of Xerox's property in Washington was $25,919,898. The original cost of its property everywhere (including Washington) was $4,544,650,836. (Both costs are as of 1983 and include leased property, based on eight times the net annual rental rate.)

7. In order to sell Xerox-manufactured products in Washington and elsewhere, Xerox employs many people outside the state of Washington, including factory workers, engineers, architects, scientists, laboratory technicians, accountants, lawyers, office personnel, warehouse personnel, computer programmers, data processors, and other employees. Their activities outside Washington contribute to the value of the products that are sold in Washington. The cost of their activities is included in the price Xerox receives for those products.

8. Xerox employs approximately 55,000 people. Approximately 460 of Xerox's employees are in Washington and 54,540 are in other states. In 1983, Xerox's Washington payroll was $13,875,256. Its total payroll everywhere in 1983 was $1,751,280,789.

9. In order to sell Xerox-manufactured products in Washington, Xerox maintains sales offices, services offices, and a products demonstration center in Washington, and employs sales representatives, service technicians, clerical/administrative personnel, and others in Washington whose

activities contribute to the value of products sold in this state. The cost of their activities is included in the price Xerox receives for those products.

10. As reported on returns filed with the Washington State Department of Revenue for business and occupation tax purposes, Xerox's annual Washington sales of products manufactured outside Washington ranged from $64.4 million to $75.7 million during the period January 1, 1980, through December 31, 1984. Xerox paid retailing and wholesaling taxes to Washington of $1,537,075.68 during that period.

11. Xerox's 1983 total sales everywhere were $4,963,342,857. Its 1983 sales in Washington were $67,569,385.

12. Xerox pays taxes to other jurisdictions on income derived from its sale of products in Washington. Xerox pays taxes to the states of California and New York on the income Xerox derives from manufacturing goods in those states and selling them in Washington. Xerox's gross proceeds from the same goods are also used by Washington as the measure of its retailing and wholesaling taxes on Xerox. The income taxed by California and New York is Xerox's gross receipts (i.e., its gross income of every kind and from every source, including its gross proceeds from goods manufactured in those states and sold in Washington), minus certain deductions permitted by statute, and multiplied by an apportionment factor. California's and New York's taxes are apportioned on the basis of a three-factor formula that compares Xerox's property, payroll, and sales in those states to its property, payroll, and sales everywhere. For goods Xerox manufactures in California or New York and sells in Washington, the property and payroll of Xerox's plant that produces those goods, its distribution centers, and its corporate and/or regional headquarters located in the manufacturing state are included in the numerator of that state's property and payroll factors, respectively.

13. Xerox borrowed and invested funds during the years 1980 through 1984 in the generally available money markets. Xerox's experience with respect to the cost of borrowing

money and its return on invested money reflected the prevailing market rates of interest.

14. No claims for refund are made by Xerox in this action on behalf of any corporation that is or has been a subsidiary or affiliate of Xerox. This stipulation is not a waiver of any such claims and is without prejudice to any right any past or present Xerox subsidiary or affiliate corporation may have to seek such relief in a separate action.

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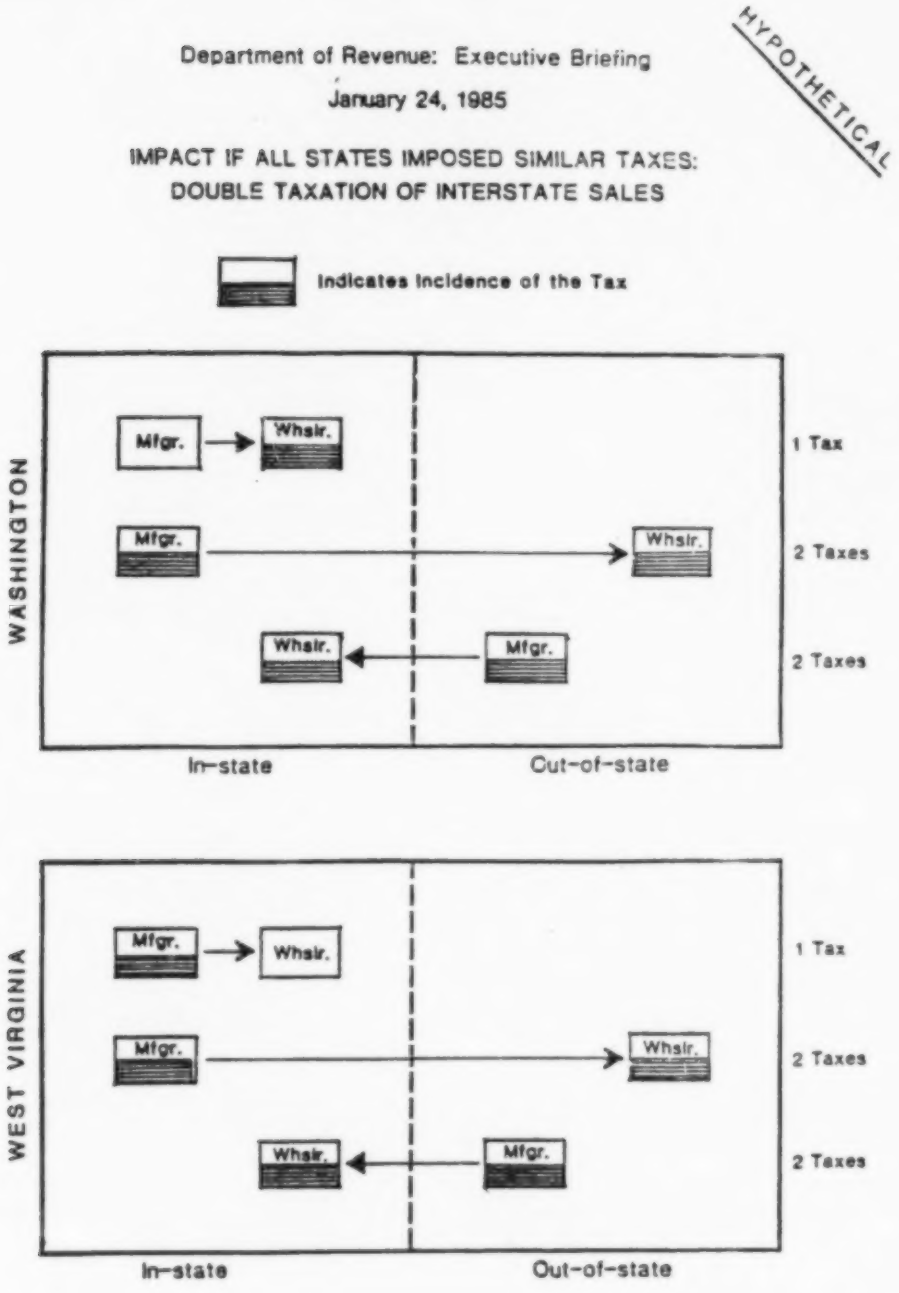
Appendix K

State of Washington
Executive Briefing Chart*



*Washington State Senate Committee on Ways and Means, Report on SB 4228 (March 7, 1985).